



# भारत का राजपत्र

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NEW DELHI, SATURDAY, FEBRUARY 27, 1982/ PHALGUNA 8, 1903

इस भाग में भिन्न पृष्ठ संख्या वो जाती है जिससे कि वह घलग संकलन के रूप में रखा जा सके

Separate paging is given to this Part in order that it may be filed as a separate compilation

## भाग II—खण्ड 3—उप-खण्ड (iii)

## PART II—Section 3—Sub-section (iii)

(संघ राज्यक्रम प्रशासनों को छोड़ कर) केन्द्रीय प्राधिकारियों द्वारा जारी किए गए आदेश और अधिसूचनाएं  
Orders and Notifications issued by Central Authorities (other than  
Administrations of Union Territories)

## भारत निर्वाचन आयोग

नई दिल्ली, 18 सितम्बर, 1981

आ० अ० 38.—लोक प्रतिनिधित्व अधिनियम 1951 (1951 का 43) की धारा 106 के अनुसरण में निर्वाचन आयोग 1980 की निर्वाचन अर्जी सं० 1 में दिया गया उच्च न्यायालय, उड़ीसा की तारीख 22 जून, 1981 का निर्णय तथा तारीख 30 मितम्बर, 1980 का आदेश प्रकाशित करता है।

## ELECTION COMMISSION OF INDIA

New Delhi, the 18th September, 1981

O.N. 38.—In pursuance of Section 106 of the Representation of the People Act, 1951 (43 of 1951) the Election Commission hereby publishes the judgement dated 22nd June, 1981 and order dated 30th September, 1980 of the High Court of Orissa in Election Petition No. 1 of 1980.

IN THE HIGH COURT OF ORISSA

## ORDER-SHEET

## Election Petition No. 1 of 1980

Gayachand Bhuyan, ...Petitioner.

Versus

Bijayananda Patnaik &amp; two Ors. ...Respondents.

Sl. No. of Order.	Date of Order.	Order with signature.
xx	xx	xx

14. 30-9-80. The petitioner as well as respondents 1 to 3 were candidates for election to the Kendrapara Lok Sabha Constituency in the last election to the Lok Sabha (7th Lok

Sabha) held on 3rd January, 1980. Respondent No. 1 Bijayananda Patnaik who polled the highest votes (1,77,579 votes) was declared elected. The petitioner Gayachand Bhuyan polled 1,71,836 votes, respondent No. 2 Surendranath Dwivedy polled 46,362 votes and respondent No. 3 Pramod Kumar Choudhury polled 16,784 votes. This petition has been filed under section 80 of the Representation of People Act (hereinafter called the 'Act') on 20th February, 1980 challenging the election of respondent No. 1 Bijayananda Patnaik. The petitioner alleges a number of corrupt practices on the part of respondent No. 1 and his election agents which are set forth in paragraphs 10 to 20 of the election petition. Respondent No. 1 in his written statement filed on 26th June, 1980 refused the allegations contained in the petition and also pleaded that the allegations contained in the petition are vague and devoid of material facts. A separate application has also been moved on behalf of respondent No. 1 praying that paragraphs 10, 11, 12, 13, 14, 15, 16, 17, 19 and 20 of the election petition are vague and do not conform to section 83(1)(b) of the Act and be struck off. After examining the pleadings of both sides, the following two issues were framed as preliminary issues.

- (1) Whether the allegation contained in paragraphs 10, 11, 12, 13, 14, 15, 16, 17, 19 and 20 of the election petition is vague and lack in material facts and particulars, and if so, what is its effect?
- (2) Whether the petition as framed discloses no cause of action and is liable to be rejected on that ground?

The petitioner has also filed an amendment petition on 25th August, 1980 to amend paragraph 10 of the election petition. The argument on the preliminary issues and on the amendment petition was heard. For the sake of convenience both the preliminary issues are taken up together.

**Issue Nos. 1 and 2:**

The relevant portion of section 83 is quoted below for reference :—

**"83. Contents of petition.—(1) An election petition—**

- (a) shall contain a concise statement of the material facts on which the petitioner relies ;
- (b) shall set forth full particulars of any corrupt practice that the petitioner alleges, including as full a statement as possible of the names of the parties alleged to have committed such corrupt practice and the date and place of the commission of each practice ; and

xx            xx            xx            xx."

From the above provision it is absolutely clear that the election petition must conform to the provisions of clauses (a) and (b) of sub-section (1) of section 83 of the Act. The first requirement is that the petition must contain a concise statement of material facts on which the petitioner relies. Clause (b) of sub-section (1) of section 83 of the Act enjoins that where the election is challenged on the ground of corrupt practice besides stating the material facts on which the petitioner relies, the petition shall set forth full particulars of any corrupt practice including as full a statement as possible of the names of the parties alleged to have committed such corrupt practice and the date and place of the commission of such practice. Mr. Misra, learned counsel appearing for respondent No. 1, submitted that the provisions of section 83(1)(b) are mandatory and in case of non-compliance of the same, the election petition is liable to be dismissed. According to him, paragraph 10 to 17, 19 and 20 of the election petition are vague and lack in full particulars of corrupt practice that has been alleged and the names of the parties alleged to have committed the corrupt practice and the date and place of such practice are also wanting. Mr. Misra therefore argued that the allegation made in paragraph 10 is that respondent No. 1 Bijayananda Patnaik himself and/or with his consent his election agent Sarat Kumar Kar offered gratification on 2nd December, 1979 to respondent No. 3 Pramod Kumar Choudhury, who with the financial aid given by respondent No. 1 filed his nomination on 8th December, 1979 as an independent candidate and polled 16,784 votes which would have been polled in favour of the petitioner. By such bribe given by respondent No. 1 to respondent No. 3 in order to stand as a candidate at the election, respondent No. 1 has committed corrupt practice as envisaged under section 123(1)(A)(a) of the Act. There is no definite allegation as to whether respondent No. 1 himself or his agent offered gratification and no place has also been mentioned where respondent No. 1 offered such illegal gratification.

2. At this stage it may be mentioned that the petitioner has sought permission to amend paragraph 10 and to add the words "at Cuttack" after "2-12-79" on the ground that due to inadvertence and typographical error these two words were omitted. This amendment has been opposed on the ground that election petition was filed on 20th February, 1980 and the amendment petition was filed at a belated stage on 25th August, 1980 and that too much after the objection was taken in the written statement filed by respondent No. 1 on 26th June, 1980 and according to section 86(5) of the Act any amendment of such a nature should not be allowed. Section 86(5) of the Act is quoted below for reference :—

"The High Court may, upon such terms as to costs and otherwise as it may deem fit, allow the particulars of any corrupt practice alleged in the petition to be amended or amplified in such manner as may in its opinion be necessary for ensuring a fair and effective trial of the petition, but shall not allow any amendment of the petition which will have the effect of introducing particulars of a corrupt practice not previously alleged in the petition."

Mr. Misra relying on the above provision argued that the amendment should not be allowed as the amendment was

sought at a belated stage and if the amendment is allowed his client will be seriously prejudiced. He relied on two decisions reported in A.I.R. 1969 S.C. 734 (Manubhai Nandlal Amersey Vs. Popatlal Manilal Joshi and others) and 12 E.L.R. 461 (Harish Chandra Bajpai and another Vs. Triloki Singh). In A.I.R. 1969 S.C. 734 it has been held :—

"Normally an application for amendment under S. 86(5) should be made within a reasonable time before the commencement of the trial. The Court has power to allow an amendment even after the commencement of the trial, but as a rule leave to amend at a late stage should be given in exceptional cases where the petitioner could not with reasonable diligence have discovered the new facts earlier. Leave to amend will not be given if the petitioner is not acting in good faith or has kept back the facts known to him before the trial started."

Mr. Mohapatra, learned counsel appearing for the petitioner, submitted that the amendment sought was due to typographical error and when it was discovered, the petitioner filed an amendment petition and there has been no delay or laches. He also submitted that the court has power under section 86(5) of the Act to allow the petition to be amended or amplified in such manner as may in its opinion be necessary for ensuring a fair and effective trial of the petition.

3. The election petition was filed on 20th February, 1980 and the written statement was filed on 26th June, 1980 and the amendment petition was filed by the petitioner on 25th August, 1980 after the petition to strike off certain paragraphs was filed on 14th August, 1980. It appears that the petition was not diligent and has not acted in good faith. So I do not think it proper at this belated stage to allow the amendment as prayed for by the petitioner. Even if the amendment is allowed. In my view, paragraph 10 still remains vague. There is no definite allegation in paragraph 10 as to who actually offered the illegal gratification. So in my view paragraph 10 of the election petition is not in conformity with section 83(1)(b) of the Act.

4. Mr. Misra submitted that paragraphs 11 and 13 cover allegation under almost all heads of corrupt practice which are sweeping in nature and completely lack in regard to particulars. The minimum necessary particulars as to which person committed which corrupt practice on which date and whether the said person is the returned candidate or his agent or some one acting in his interest have not been stated. The difference between clause (b) and sub-clauses (iii) & (iv) of clause (d) of sub-section (1) of section 100 of the Act are well known. Therefore, it is necessary that the person should be named and absence of a single ingredient makes the allegations untenable. Mr. Mohapatra submitted that these paragraphs are merely introductory and the details have been given in subsequent paragraphs. Regarding paragraphs 12 and 15 Mr. Misra submitted that in these paragraphs the particulars i.e. the names of the persons hiring or procuring; whether it is the returned candidate or an agent with his consent or a person committing it in the interest of the returned candidate; the place, the date and the time it was committed; the name of the person or persons from whom vehicles were hired or procured; the number of vehicles and their registration numbers; which vehicle was carrying to which booth; the voters that were carried in each and who carried whom and where; and whether they were carried free are lacking. So Mr. Misra contended that these paragraphs should be struck off. He relied on the decisions reported in 10 E.L.R. 337(Bhikaji Keshao Joshi and another vs. Brilal Nandlal Biyani and others) and A.I.R. 1972 S.C. 1302 (Raj Narain vs. Smt. Indira Nehru Gandhi and another). His contention is that the allegations contained in paragraphs 12 and 15 are thus absolutely vague and are based on imagination. Mr. Mohapatra submitted that the allegations contained in paragraphs 12 and 15 are not vague and the details of the allegations will be supplied at the time of hearing. After considering the argument of both sides, I am of the view that these two paragraphs i.e. 12 and 15 do not set forth full particulars of any corrupt practice and the date and place of commission of each such practice and as such the allegations are vague.

5. Regarding paragraph 14 'including the duplicate paragraph (14) Mr. Misra submitted that the allegations regarding the assistance of the Government servants should be struck off because it lacks both material facts and particulars and the necessary ingredients i.e. the assistance was 'obtained' or 'procured'; the names of the persons obtaining or procuring and the place and the date where it was done; the nature of the assistance; how it has furthered the prospects of the election of the returned candidate; and the Government servants named belong to the class specified in section 123(7) of the Act are lacking. He relied on the decisions reported in A.I.R. 1972 S.C. 515 (Hardwari Lal vs. Kanwal Singh) & AIR 1975 S.C. 2299 (Smt. Indira Nehru Gandhi vs. Sri Raj Narain). Mr. Mohapatra submitted that all the necessary particulars and the details of the allegations have been furnished in this case and it is quite in conformity with section 83(1)(b) of the Act.

Regarding paragraph 16 Mr. Misra submitted that the allegation that election offices were opened at 150 places has no basis. The places where the offices were opened, who opened it on what date, whether it was rented or free, if rented the amount of rent, the number of workers who were engaged in which office and what amount was paid, and who paid it are material facts and have not been mentioned. In the absence of all these, the allegation is vague. Mr. Mohapatra refuted the allegation and submitted that the details that are necessary have been given.

Regarding paragraph 17 Mr. Misra submitted that the allegations do not show that the Government servants belong to one of the specified classes of Government servants mentioned in section 123(7) of the Act and hence no triable issue arises. Mr. Mohapatra submitted that this objection can be considered at the time of hearing.

Regarding paragraph 19 and 20 Mr. Misra submitted that these come under section 100(1)(d)(iii) and (iv) of the Act. No particulars at all about who were the voters that were excluded or who were the non-voters that were allowed to vote have been given. He relied on a decision reported in 55 E.L.R. 358 (Kripal Singh Rawat vs. Shanti Prapanna Sharma) and submitted that these paragraphs are liable to be struck off. Further he submitted that even if it is proved that the aforesaid provisions have been violated it must be shown that the result of the election has been materially affected and that no triable issue arises. Mr. Mohapatra however refuted the contention of Mr. Misra and submitted that this matter shou'd be decided after the evidence is adduced by both parties and should not be gone into at this stage. After hearing the counsel for both sides, I am of the view that paragraphs 10, 12 and 15 are vague and lack in material particulars and are not in conformity with section 83(1)(b) of the Act and as such give rise to no triable issue. Since there is no occasion for any opportunity to amend the aforesaid paragraphs, the same be deleted from the petition. The preliminary issues are answered accordingly.

6. In the result, therefore, paragraphs 10, 12 and 15 only are deleted. The prayer of respondent No. 1 to strike off paragraphs 11, 13, 14 (including duplicate paragraph 14) 16, 17, 19 and 20 is not accepted. The amendment petition filed by the petitioner is rejected.

Put up this case on 10th October, 1980 for settlement of issues.

Sd/-  
J. K. MOHANTY  
Dt. 30-9-80.

TRUE COPY

Sd/-  
DEPUTY REGISTRAR,  
Orissa High Court,  
Cuttack.

IN THE HIGH COURT OF ORISSA  
Election Petition No. 1 of 1980

In the matter of an application under sections 80-A & 81 of the Representation of the People Act, 1951  
Gayachand Bhuyan ...Petitioner  
Versus  
Bijayananda Patnaik & others. ...Respondents.

For Petitioner

— M/s. S. P. Mohapatra,  
B. B. Mohanty,  
G. C. Jena,  
S. T. Mohapatra, &  
Shyamsunder Das.

For Respondents

— M/s. B. Misra,  
S. C. Roy,  
A. Patnaik,  
A. K. Sahoo, &  
K. K. Patnaik.

PRESENT :

The Honourable Mr. Justice J. K. Mohanty.

MOHANTY, J.—Shri Gayachand Bhuyan having lost in the Lok Sabha election held on 3rd January, 1980 from Kendrapara constituency has filed this election petition under sections 80 and 81 of the Representation of the People Act, 1951 (hereinafter referred to as the 'Act') for setting aside the election of respondent No. 1 Sri Bijayananda Patnaik, who was declared elected from this constituency. The allegations made in the petition may now be briefly stated. After the notification calling for filing nomination was published the petitioner filed his nomination for the aforesaid parliamentary constituency as a candidate of Indian National Congress (I) which is the largest all India Political party. Respondent No. 1 filed his nomination on 2nd December, 1979 as a candidate of his party named as Janata (S) (now Lok Dal). Similarly Sri Surendranath Dwivedy (respondent No. 2) filed his nomination as a candidate of his party known as Janata. Sri Pramod Kumar Choudhury (respondent No. 3) filed his nomination as an Independent candidate. Election to the aforesaid constituency was held on 3rd January, 1980 and counting took place on 6th January, 1980 and result of the election was declared by the District Returning Officer, Cuttack on 7th January, 1980 and respondent No. 1 was declared elected having polled 5,757 votes more than the votes polled by the petitioner. The votes polled by the candidates are given below:—

Sri Bijayananda Patnaik (Respondent No. 1)	— 1,77,579
Sri Gayachand Bhuyan (Petitioner)	— 1,71,836
Sri Surendranath Dwivedy (Respondent No. 2)	— 46,362
Sti Pramod Kumar Choudhury (Respondent No. 3)	— 16,784

10,192 votes were rejected.

In paragraphs 2, 4 and 9 of the petition the political opportunism of respondent No. 1, his electoral failure, and his political life have been described in details which are not necessary to be mentioned here for the purpose of this case. According to the petitioner, the election of respondent No. 1 is void on variety of grounds. It is alleged that respondent No. 1 who is an Industrialist and had various industrial concerns in the State had earned huge fortune and amassed large money both inside and outside the State and had spent about rupees 50 lakhs for furtherance of his election in Kendrapara lok sabha constituency. Respondent No. 1 committed numerous corrupt practices and resorted to general bribery and threatening in the constituency which extended to such large extent throughout the constituency that the freedom of election was materially hampered. Respondent No. 1 who was then a Minister at the Centre and who had a Government of his party in the State of Orissa also used Government funds and patronage and funds of Kendrapara Municipality for the purpose of furthering the prospect of his election. Respondent No. 1 as well as the Ministers of the State misused their powers and with the consent of respondent No. 1 the Ministers directed the officers of State Government and officials of Kendrapara Municipality to actively assist and work for the furtherance of the prospects of respondent No. 1's election and accordingly respondent No. 1 and with his consent and with the consent of his election agents, many persons in Government service made arrangements and provided facilities and actively worked for respondent No. 1 though it

was no part of their official duty. In that way respondent No. 1, with his consent, and/or with the consent of his election agents got assistance of the Government servants who provided Government vehicles and vessels to respondent No. 1 and his election agents and other persons for election propaganda and for carrying voters to and from the polling stations. Similarly with the consent of respondent No. 1 and/or with the consent of his election agents persons in Government service made arrangements and provided facilities for arranging election meetings and constructing pandals for respondent No. 1. With the consent of respondent No. 1 and with the consent of his election agents various corrupt practices have been committed as a result of which the result of the election has been materially affected. The returned candidate Sri Bijayananda Patnaik and his election agents took no reasonable means for preventing the commission of corrupt practices at the election. On the other hand, respondent No. 1, and with his consent and with the consent of his election agents other persons working for furthering the prospects of respondent No. 1's election offered bribe and gave promises to electors who have voted for him and offered gratifications to the electors to vote for respondent No. 1. The details of the corrupt practices have been enumerated in paragraphs 14 (which contains ten sub-paraphs), 14 (duplicate), 16, 17, 18, 19 and 20 of the petition.

2. In the written statement filed by respondent No. 1 the allegations regarding political career etc. of respondent No. 1 have been disputed. In paragraphs 6 to 14 and 24 the allegations of corrupt practices have been specifically denied which will be discussed in detail while dealing with individual charges levelled against respondent No. 1. Respondent No. 1 has further asserted that he and his election agents took all reasonable means for preventing commission of corrupt practices. The election was free and fair and neither respondent No. 1 nor any of his election agents indulged or committed any corrupt practice. It has further been stated that respondent No. 1's victory at the election is the verdict of the people secured in a free and fair election which is to be respected and cannot be set aside on frivolous and fanciful allegations. Finally it has been stated that the averments made in the election petition are false, frivolous, and subterfuge, and so the petition is liable to be dismissed with exemplary costs to respondent No. 1. Respondents 2 and 3 did not file any written statement and were set ex parte.

3. After filing the written statement, a separate application was filed on behalf of respondent No. 1 praying to strike off paragraphs 10 to 14, 14 (duplicate), 15, 16, 17, 19 and 20 of the election petition as they are vague and do not conform to section 83(1)(b) of the Act. After examining the pleadings of both sides the following two issues were framed as preliminary issues.

- (1) Whether the allegation contained in paragraphs 10, 11, 12, 13, 14, 15, 16, 17, 19 and 20 of the election petition is vague and lack in material facts and particulars, and if so, what is its effect?
- (2) Whether the petition as framed discloses no cause of action and is liable to be rejected on that ground?

The petitioner also filed a petition to amend paragraph 10 of the election petition. Argument on the preliminary issues and the petition of amendment was heard and this Court by order No. 14 dated 30th September, 1980 held that paragraphs 10, 12 and 15 of the election petition are to be deleted as they are vague and lack in material particulars and do not conform to section 81(3)(b) of the Act and raise no triable issues. The amendment petition filed by the petitioner was also rejected.

4. Upon the pleadings of the parties the following issues were framed for decision.

- (1) Is the Election Petition maintainable as framed?
- (2) Did the Government servants named in paragraphs 14 and 17 of the election petition render any assistance for the furtherance of the prospects of respondent's election and whether such assistance was obtained or procured by respondent No. 1 or by any other person with the consent of respondent No. 1?

- (3) Do the Government servants named in paragraphs 14 and 17 of the election petition belong to any of the classes specified in sub-section (7) of section 123 of the Representation of the People Act?
- (4) Did respondent No. 1 along with the persons named in paragraphs 14 and 18 of the election petition address meetings and make promises on the dates and at the places mentioned in the said paragraphs?
- (5) Whether the promises, as alleged, made by respondent No. 1 constitute corrupt practice as defined under the Representation of the People Act?
- (6) Did respondent No. 1 or any person with his consent offer gratification to the persons named at the places and on the dates as alleged in paragraph 14 of the election petition and whether the alleged gratification was with a view to induce the persons named to vote for respondent No. 1?
- (7) Did respondent No. 1 incur any unauthorised expenditure in contravention of Section 77 of the Representation of the People Act as alleged in para 16 of the Petition?
- (8) Is the election of respondent No. 1 liable to be vacated on account of non-compliance with the provisions of the Act and the Rules framed thereunder?
- (9) Whether there was any improper reception, refusal or rejection of any vote or the reception of any vote which is void, as alleged in paragraph 19 of the petition and whether the result of the election, in so far as it concerns the returned candidate, has been materially affected thereby?
- (10) What relief, if any, is the petitioner entitled to?

#### FINDINGS

5. ISSUE NO. 1.—This has already been considered as a preliminary issue by this Court and by order No. 14 dated 30th September, 1980 it has been held that the election petition is maintainable except paragraphs 10, 12 and 15 which were deleted by the same order.

6. ISSUE NO. 2, 3, 4, 5 and 6.—These issues are taken up together for convenience. The petitioner has given details of corrupt practices contained in paragraphs 14, 14 (duplicate), 17 and 18 of the election petition coming under section 123(1) & (7) of the Act. His case is that either respondent No. 1 himself or his agents and/or any other person with the consent of respondent No. 1 committed them. It is now well settled that if the corrupt practices are committed by the agent of the respondent other than his election agent, under section 100(1)(d)(ii) of the Act the petitioner has to prove material effect on the election in favour of the returned candidate before the election is declared void. A plea in an election petition that a candidate or his agent is guilty of corrupt practice is a plea relating to a grave charge. It is manifest that if this charge is proved, not only the election is invalidated but the respondent is also disqualified for standing in the election. A charge of this nature must be established by clear and cogent evidence by those who seek to prove it. Mere preponderance of probability in the matter of evidence will not be sufficient. It has to be satisfied that the conduct attributed to the offender is proved by evidence which is clear and cogent and almost clinching to the issue. Mr. Misra, learned counsel for respondent No. 1, cited several decisions indicating the principle to be adopted in deciding such cases of corrupt practice. He cited decisions reported in A.I.R. 1977 S.C. 208 (M. Narayan Rao vs. G. Venkat Reddy & others), A.I.R. 1976 S.C. 1599 (D. Venkat Reddy vs. R. Sultan), A.I.R. 1976 S.C. 1886 (Kanhaiyalal vs. Mannalal & others), A.I.R. 1976 S.C. 2573 (Ramji Prasad Singh vs. Ram Bilas Jha), A.I.R. 1975 S.C. 1612 (Abdul Hussain Mir vs. Shamshul Huda & another) and A.I.R. 1963 Orissa 83 (Bankabehari Das vs. Chittaranjan Naik). In A.I.R. 1977 S.C. 208 it has been held:—

"The following are the principles governing election disputes especially in regard to the charge of a commission of corrupt practice, to be kept in view by the Court:

- (1) That the charge of commission of corrupt practice has to be proved and established beyond doubt like a criminal charge or a quasi-criminal charge but not exactly in the manner of establishment of the guilt in a criminal prosecution giving the liberty to the accused to keep mum. The charge has to be proved on appraisal of the evidence adduced by both sides especially by the election petitioner.
- (2) That the election held and results declared on the choice of the voters should not be lightly interfered with or set aside by a court of law. After all, in the holding of a fresh election are involved numerous botherations, tremendous expenses, loss of public time and money and uncertainty of the public representation from a particular constituency.
- (3) A charge of corrupt practice is easy to level but difficult to prove. If it is sought to be proved only or mainly by oral evidence without there being contemporaneous documents to support it, court should be very careful in scrutinizing the oral evidence and should not lightly accept it unless the evidence is credible, trustworthy, natural and showing beyond doubt the commission of corrupt practice, as alleged.
- (6) It must always be borne in mind that the consequences of setting aside of an election on the ground of corrupt practice are very serious for the candidate concerned as well as others involved in it. A Court, therefore, should reach its conclusion with care and caution taking into consideration the broad probabilities, the natural conduct of the persons involved and the special situation in which a corrupt practice is alleged to have been committed."

In A.I.R. 1976 S.C. 1599 it has been held :—

"In a democracy such as ours, the purity and sanctity of elections, the sacrosanct and sacred nature of the electoral process must be preserved and maintained. The valuable verdict of the people at the polls must be given due respect and candour and should not be disregarded or set at naught on vague, indefinite, frivolous or fanciful allegations or on evidence which is of a shaky or prevaricating character. It is well settled that the onus lies heavily on the election petitioner to make out a strong case for setting aside an election. In our country election is a fairly costly and expensive venture and the Representation of the People Act has provided sufficient safeguards to make the elections fair and free. In these circumstances, therefore, election results cannot be lightly brushed aside in election disputes. At the same time it is necessary to protect the purity and sobriety of the elections by ensuring that the candidates do not secure the valuable votes of the people by undue influence, fraud, communal propaganda, bribery or other corrupt practices as laid down in the Act. Another principle that is equally well settled is that the election petitioner in order to succeed must plea all material particulars and prove them by clear and cogent evidence. The allegations of corrupt practices being in the nature of a quasi-criminal charge the same must be proved beyond any shadow of doubt. Where the election petitioner seeks to prove charge by purely partisan evidence consisting of his workers, agents, supporters and friends, the Court would have to approach the evidence with great care and caution, scrutiny and circumspection and would, as a matter of prudence though not as a rule of law, require corroboration of such evidence from independent quarters, unless the court is fully satisfied that the evidence is so credit-worthy and true, spotless and blemishless, cogent and consistent, that no corroboration to lend further assurance is necessary."

In A.I.R. 1976 S.C. 1886 it has been held :—

"Oral testimony will have to be judged with the greatest care and an electoral victory cannot be allowed to be nullified by a mouthful of oral testimony without contemporaneous assurance of a reliable nature from an independent source."

An election dispute is not a private feud between one individual and another. The whole constituency is intimately involved in such a dispute. Shaky and wavering oral testimony of a handful of witnesses cannot still the dominant voice of the majority of an electorate."

In A.I.R. 1976 S.C. 2573 it has been held :—

"The charge of bribery is quasi-criminal in nature and such a charge must be approved not by a mere preponderance of probabilities but beyond a reasonable doubt."

In the absence of any evidence of unimpeachable nature and particularly in the absence of any contemporaneous complaint in regard to the allegation of bribery, it would be unsafe to accept the bare word of the election petitioner and his witnesses on such a serious charge."

In A.I.R. 1975 S.C. 1612 it has been held :—

"When elections are challenged on grounds with a criminal taint, the benefit of doubt in testimonial matters belongs to returned candidate."

In A.I.R. 1963 Orissa 83 it has been held :—

"The charges of corrupt practices are quasi-criminal in character. The principles of criminal Jurisprudence are applicable."

In the case of allegations of corrupt practices the burden of proof is on the petitioner; it never shifts and the standard of proof to discharge this burden is the same as in criminal cases, that is, the matter requiring proof should be established beyond any reasonable doubt and in case of doubt the benefit should go to the respondent, though an election petition has to be tried in accordance with the procedure applicable to civil suits.

It is a sound principle of natural justice that the success of a candidate who has won at an election should not be lightly interfered with and any petition seeking such interference must strictly conform to the requirements of the law.

One of the essentials of that law is also to safeguard the purity of the election process and also to see that the people do not get elected by flagrant breaches of that law or by corrupt practices."

Regarding corrupt practices under section 123(7) which says about obtaining or procuring or abetting or attempting to obtain or procure by a candidate or his agent or by any other person with the consent of a candidate or his election agent, any assistance (other than the giving of vote) for the furtherance of the prospects of that candidate's election, from any person in the service of the Government and belonging to any of the classes, mentioned thereunder Mr. Misra cited a decision reported in A.I.R. 1975 S.C. 2299 (Smt. Indira Gandhi vs. Rajanarain) wherein what is official duty has been discussed. It has been held :—

"Official duty will be a duty in law. Official duty will be duty under administrative directions of the Executive. Official duty will be for security, law and order and matters in aid of public purpose. These duties will be in connection with election. In illustrate, Section 197 of the Criminal Procedure Code speaks of official duty.

There is nothing in the above proviso to confine the words "official duty" to duty imposed by statute. Official duty would include not merely duties imposed by statutes but also those which have to be

carried out in pursuance of administrative instructions."

It has further been held :—

"Allegations of corrupt practice in the course of an election must be judged by the same standards as a criminal charge. No rule of evidence, in judging guilt on a criminal charge, is more firmly rooted than that no charge, resting on circumstantial evidence could be held to be proved beyond reasonable doubt unless the chain of circumstances is so complete and so connected with the charge that it leaves no other reasonable hypothesis open for the Court to adopt except that the offender had committed the offence alleged.

The logical consequence of placing a charge of corrupt practice on the same footing as a criminal charge is obligation to interpret the words which define it strictly and narrowly. Indeed, any natural and ordinary interpretation on the words "obtaining or procuring or abetting or attempting" must carry with it the imperative requirement that the candidate concerned or his agent must have intentionally done an act which has the effect contemplated by Section 123(7). In other words, a "means rea" or a guilty mind as well as an "actus reus" or a wrongful act must concur to produce the result contemplated by law."

He also cited A.I.R. 1957 Rajasthan 189 (Brij Sundar Sharma-v-Election Tribunal, Jaipur and others) and A.I.R. 1958 Allahabad 794 (Motilal-v-Mangla Prasad and others) and 54 E.L.R. 61 (Daulatram Sankhyan-v-Kuldeep Singh).

Mr. Mohapatra, learned counsel for the petitioner, also relied on a passage from the decision reported in A.I.R. 1977 S.C. 208 (supra) and submitted that the charge of commission of corrupt practice has to be proved and established beyond doubt like a criminal charge or a quasi-criminal charge but not exactly in the manner of establishment of the guilt in a criminal prosecution giving the liberty to the accused to keep mum. He argued that respondent No. 1 has the duty cast on him to prove before the Court that the allegation of corrupt practices made against him are not justified.

7. On the basis of the principles laid down in the above decisions it is to be seen how far the petitioner has been able to prove his case. For convenience each item of corrupt practice mentioned in paragraph 14 which contains ten subparagraphs, duplicate paragraph 14, paragraphs 17 and 18 of the petition are dealt separately.

Paragraph 14(i) :—It is alleged by the petitioner that on 9-12-79 a public meeting was held at Aul by respondent No. 1. The B.D.O. with the help of his staff and coolies erected a pandal for the said meeting and spent money from Government fund. The meeting was held at about 6.00 p.m. and it was attended by respondent no. 1 and Sri Sarat Kumar Deb Ex-Minister of Irrigation Department, Orissa. Sri Sarat Kumar Deb was the M.L.A. of Aul Assembly constituency and was taken as a Cabinet Minister on the eve of this election for the purpose of furthering the prospect of the election of respondent no. 1. Sri Sarat Kumar Deb has been examined as R.W. 2. Both the speakers while addressing the meeting promised to construct a bridge over river Kani at Manpur. They also promised that if the people would vote for respondent no. 1 they would make the existing Aul College a full-fledged Government affiliated College and shall give financial aid to the said College. Respondent no. 1 also promised in the meeting that if the people would vote for him he would give substantial money to the villagers for renovating the Laxmibaiha Jow temple at Aul.

In paragraph 8 of the written statement the allegations have been denied as false. Further plea has been taken that no meeting was held at the place, on the date and time as alleged and so the question that respondent no. 1 and Sri Sarat Kumar Deb addressed the meeting did not arise. The allegation that the B.D.O. with his staff and coolies erected pandal for the purpose and spent Government money has been denied. It has been stated that since there was no meeting, as alleged, the question of making any promise did not arise. To the best of knowledge of respondent no. 1 there is no college at Aul as alleged, and that Sri Sarat Kumar Deb was an agent of respondent no. 1 has been denied.

To prove the allegation petitioner relies on the evidence of P.Ws. 1 and 2. P.W. 1 has stated that on 9-12-79 a meeting for the purpose of election was held by respondent no. 1 at Aul Nuabazar crossing at about 6 to 7 p.m. In the meeting Sri Sarat Kumar Deb, the then Minister, Power and Irrigation Department presided. There respondent no. 1 gave promise that he would repair the Laxmibaiha Jow temple and arrange to get a bridge constructed over river Kani at Manpur and would see that Government approval to Aul College is given. The then B.D.O. of Aul Sarat Ch. Patnaik and Overseer Mohanty Babu were placing tables, fitting semi-apas two hours prior to the meeting. They used Block Jeep ORU 7306 for the purpose. P.W. 2 also supported P.W. 1 to the extent that Block Jeep ORU 7306 was used and tables and chairs belonging to Block Office were used for the purpose. Like P.W. 1 he has also stated that respondent no. 1 and Sri Sarat Kumar Deb (R.W. 2) also made promises in the meeting. Mr. Mohapatra, learned counsel for the petitioner, submitted that except denying the allegations in the written statement, no definite case has been made out by respondent no. 1. R.W. 2 and respondent no. 1 admitted that they had been to Brahmani college which is a near about place of Aul. Admittedly they spent the night at Aul in the residence of R.W. 2 and in the circumstance there is no reason why P.Ws. 1 and 2 should not be believed that respondent no. 1 and R.W. 2 had been to Aul, held meeting and made promises in that meeting. He also submitted that the tour programme (Ext. 1) from 18-12-79 of the then Irrigation Minister, Sri Sarat Kumar Deb has been filed, but the tour programme of 9-12-79 has not been produced and deliberately suppressed. In reply Mr. Misra, learned counsel for respondent no. 1, submitted that P.W. 1 is admittedly the convenor of Aul Block Congress (I) party committee and P.W. 2 Bhimsen Das was the polling agent of the petitioner as would be evident from Ext. E/1. He further submitted that wild allegations have been made to serve their purpose. Though in the petition no mention has been made about use of Block Jeep No. ORU 7306 the witnesses have come forward to say that Block Jeep No. OKU 7306 had been used. P.W. 1 says about present of Government officers at the meeting and that the meeting was being arranged by them, but P.W. 2 does not say so. The definite case of respondent no. 1 is that there was no meeting at Aul on the date, time and at the place, as alleged, and there is no question of suppression of tour programme as there was no official tour by R.W. 2 on 9-12-79. This has been corroborated by the evidence of R.W. 3, Under Secretary, Irrigation & Power Department, who has categorically stated that no tour programme from 8-12-79 to 17-12-79 was available in the office. Mr. Misra further argued that even assuming though not admitting that in the meeting at Aul some promises were made for constructing a bridge and giving approval to the College at Aul, these were long standing demands of the public and redress of the grievances of the people by the Minister is no offence. He relied on a decision reported in A.I.R. 1976 S.C. 27 (Iqbal Singh-v-Gurdas Singh and others) wherein it has been held :—

"The election time is the time when people in power as well as ordinary politicians are active in trying to show that they are out to help the people. They address meetings and hold out all sorts of promises. Where a large section of the people are concerned, who only got an amenity which they ought in any case to get (in this case, grant for construction of Dharmashalas) and which they get, probably a little more easily because it happens to be election time, it cannot be said that the person in authority (who was contesting the election) making that promise and holding out that he would carry out many remedial measures to benefit the people was resorting to bribery or bargaining for votes. It may not amount to setting up a very high standard and it may be very desirable that whatever is done for the people should be done by persons in authority throughout the period of their office. But they naturally are more active at election time than other times. That cannot be said to amount to corruption."

He also cited A.I.R. 1961 Punjab 244 (S. Meher Singh-v-Umrav Singh) and A.I.R. 1966 M.P. 255 (Hariam Singh-v-Kamal Prasad Sharma). P.W. 1 has also admitted that there was demand by the public for construction of the bridge over river Kani and for giving approval to Aul College and no complaint has also been made before the Election Commission or any authority.

On a consideration of the evidence of P.Ws. 1 and 2 and the argument of both sides, I am of the view that P.Ws. 1 and 2 have stated something which have not been mentioned in the petition. P.W. 1 is admittedly the convenor of the Aul Block Congress (I) party committee and also worked for the petitioner in the election. The evidence of P.Ws. 1 and 2 are also at variance regarding the presence of Government officers. R.Ws. 2 and 11 have categorically stated that there was no meeting at Aul as alleged. Considering all these aspects it cannot be said that there is clinching evidence in support of the allegations made in the petition and the allegations have been proved beyond any shadow of doubt.

Paragraph 14 (ii).—The allegation is that on 10-12-79 at about 9.00 a.m. respondent no. 1 and his agent Sri Sarat Kumar Deb (R.W. 2) visited village Bhuiinpur where the people of Bhuiinpur as well as the people of neighbouring villages Badamanga and Kalaspur were present. Most of the villagers are Harijana. Respondent no. 1 and his agent R.W. 2 addressed the gathering and promised that if the villagers would vote for respondent no. 1, respondent no. 1 as well as the State Government would help the villagers to convert their thatched houses into tiled roof houses and respondent no. 1 and his agent R.W. 2 distributed money totalling about Rs. 1000 by paying Rs. 5 each to the Harijans including Sadhu Ch. Mallik (P.W. 3) of village Badamanga and Daitari Mallik of village Bhuiinpur inducing them to vote for respondent no. 1.

In paragraph 9 of the written statement the allegations have been denied as false. It has been stated that there was no meeting at Bhuiinpur and no promise was made by respondent no. 1 or R.W. 2. The allegation that respondent no. 1 and R.W. 2 distributed money amongst the voters is totally false. It has been asserted that no gratification to any person whatsoever has been offered with an inducement to vote. The persons mentioned in paragraph 14(ii) of the petition, who are said to have received bribe are not known to respondent no. 1.

P.Ws. 3 and 4 are the witnesses who have been examined to support the case of the petitioner. P.W. 3 has stated that on 10-12-79 there was a meeting at Bhuiinpur where respondent no. 1 addressed. It was arranged by R.W. 8 and Babaji Nandi. The meeting was held at about 9.00 a.m. and he was present there. R.W. 2 presided over the meeting and respondent no. 1 was the Chief Speaker. The villagers of Talmada, Bhuiinpur, Aitpur, Kalaspur and Badamanga were present in the meeting. Respondent No. 1 addressed the meeting and told that he would make improvement of the villages. Many Harijans were also present in the meeting. After the meeting R.W. 2 told the Harijans to meet him. Respondent no. 1 told the Harijans that if they vote for him he would construct tiled houses for them and would see to the comforts of the people. Thereafter respondent no. 1 handed over Rs. 50 each to each one of the persons present including himself. There were about 20 to 21 persons. Due to the above payment they all propagated in their villages for respondent no. 1. P.W. 4, the ex-chairman of Aul Panchayat Samity has stated that there was an election meeting held by respondent No. 1 at Bhuiinpur on 10-12-79 at about 9.00 a.m. According to him, in the meeting respondent no. 1 promised that if he would be elected he would see that a bridge over river Kani would be constructed. He also promised to look into the matter of approval of Aul College. He stated that the people present were asking respondent no. 1 for help. He subsequently heard that some money had been paid, but he has no personal knowledge about the same. Mr. Mohantra, learned counsel for the petitioner, also pointed out that in the cross-examination of P.W. 2 it has been brought out that there was a meeting on 10-12-79 at Bhuiinpur. He argued that though there has been denial by respondent no. 1 in the written statement and in the evidence that there was no meeting at Bhuiinpur, yet respondent no. 1 (R.W. 11) has admitted that there was a meeting at Kalaspur. In order to go to Kalaspur one has to pass through Bhuiinpur. So naturally there was a meeting at Bhuiinpur as admittedly respondent no. 1 was holding road-side meetings though this fact has been denied by him. In Ext. 4 the entry dated 10-12-79 at page 118 of Log Book of Jeen No. ORU 7306 belonging to B.D.O. Aul it has been mentioned that the jeep passed through Bhuiinpur. Further the tour programme of P.W. 2 of this date has also been suppressed. So from the above facts Mr. Mohantra asserted that the meeting at Bhuiinpur as stated by P.Ws. 3 and 4 has been proved and the corrupt practices

such as payment of money to voters and promise by respondent no. 1 as an inducement to vote for him have been established.

Mr. Misra, submitted that though in the petition it has been mentioned that Rs. 5 has been paid to each voter by respondent no. 1, P.W. 3 has stated that Rs. 50 has been paid and that too at a public place. P.W. 3 has not informed this to the petitioner. According to Mr. Misra P.W. 3 is a polling agent of the petitioner which is evident from Ext. E. Though the name of P.W. 3 tallies with Ext. E, i.e. Sadhu Charan Mallik, the name of village mentioned in Ext. E and the name of the village given in the evidence is different. So in the circumstance it is difficult to hold that P.W. 3 was a polling agent of the petitioner. P.W. 4 has not stated anything about payment of bribe. Only he has heard this and so his evidence should not be relied upon. The promises given in the meeting as stated by P.Ws. 3 and 4 vary as P.W. 3 has stated that respondent no. 1 promised in the meeting that he would construct tiled houses but P.W. 4 has stated that respondent no. 1 promised that he would construct a bridge over river Kani and would see that approval to Aul College is given. P.W. 4 has admitted that he is a supporter of Congress (I) party. Mr. Misra further argued that P.W. 3 is in a nature of an accomplice as he has himself received bribe and there is no independent corroboration of his evidence in material particulars. He cited a decision reported in A.I.R. 1963 Orissa 83 (supra) wherein it has been held :—

"On accomplice evidence, which is an almost normal feature in an election petition, it is to be generally kept in view that the law in India with regard to accomplice evidence is not different from the law in England. It is the rule of practice so invariable and peremptory that it must be regarded as having hardened into a rule of law that the Judge must be fully and expressly alive to the need for independent corroboration in material particulars both with regard to the offence and the offender, that one accomplice cannot corroborate another, and that although no doubt a previous statement of an act complice satisfying the requirements of section 157 of the Evidence Act can be used to corroborate his testimony, it is not the independent corroboration required by this rule. Save in most exceptional circumstances, no court will record a finding of corrupt practice on such evidence."

Mr. Misra also submitted that P.W. 3 has stated that R.W. 8 and one Babaji Nandi arranged the meeting. R.W. 8 has categorically stated that he has not arranged any meeting at Bhuiinpur. He also pointed out that the entry dated 10-12-79 in Ext. 4 has not been specifically proved and no question to the B.D.O. Aul (P.W. 19) has been put about this entry. R.W. 2 and respondent No. 1 have specifically denied about the meeting at Bhuiinpur.

After considering the evidence of the witnesses of both sides, I am of the view that the petitioner has failed to prove the allegations of bribery, the promise made by respondent No. 1 even if it is accepted that there was a meeting at Bhuiinpur. P.W. 3 is in the nature of an accomplice and his evidence has not been corroborated at all. P.W. 4 does not support him about the bribery. The promises about which P.Ws. 3 and 4 speak greatly vary. R.W. 8 who is said to have arranged the meeting has also categorically stated that no meeting was held at Bhuiinpur and that he has not arranged any meeting. So the alleged corrupt practices have not been proved beyond doubt.

Paragraph 14 (iii).—Petitioner has come forward with the allegation that on 11-12-79 at about 7.00 a.m. an election meeting of respondent No. 1 was arranged at Talchuan by Government servants such as Executive Engineer, Kendrapara Irrigation Division, S.D.O. Irrigation, Rainagar Sub-division Sri Dayanidhi Acharya and Section Officer of the said Irrigation Department. B.D.O. Sri Sidheswar Nayak and S.D.O. Irrigation Sri Dayanidhi Acharya also engaged Government vehicles such as ORC 3136 belonging to S.D.O. Rainagar Irrigation Sub-division and OP U 7422 belonging to Executive Engineer, Irrigation Division Kendrapara and Government Jeeps belonging to B.D.O. Rainagar and Government Launch D-14 for the purpose of Organising the election

meeting. The aforesaid Government servants engaged their staff and coolies to erect pandal for the meeting and also made other arrangement and facilities to make this meeting a success though this was no part of their official duty. Respondent No. 1 well as his agents used Government launch D-14 to cross the river in order to attend the meeting. The meeting was addressed by respondent No. 1 and R.W. 2 who promised to provide tube wells in the area if people vote for respondent No. 1.

In paragraph 10 of the written statement respondent No. 1 has denied all these allegations and characterised them as false. According to him, there was no meeting held at Talchuan on the date alleged. It has further been stated that the allegation that the meeting was arranged and pandal was erected for the purpose by Government servants is totally false and mischievous. The use of Government vehicle to attend the meeting has also been denied. The allegation that respondent No. 1 used Government launch D-14 to cross the river is false and has been denied as respondent No. 1 had at his disposal a private launch and there was no necessity to utilise Government launch D-14. It is stated that no meeting was held and no promise was made by respondent No. 1 or R.W. 2 on the date alleged and so the question of inducing the voters is false.

P.Ws. 15, 24 and 27 are the witnesses examined in support of the case. P.W. 15 has stated that respondent No. 1 held a meeting at Talchuan on 11-12-79 at about 7.00 a.m. According to him, respondent No. 1 reached Talchuan at about 12.00 midnight on 10-12-79 and stayed there in the Inspection Bungalow. He came to Talchuan from Jainagar by motor launch Tug-14 belonging to Government. R.W. 2 and R.W. 5 Nalini Mohanty came along with respondent No. 1. The S.D.O. Irrigation, Rajnagar, B.D.O. Rajnagar and the Executive Engineer, Irrigation, Kendrapara had been to Talchuan on 10-12-79 to arrange the meeting there. The Irrigation Deptt. Jeep No. 3436 was also utilised for the purpose. In the meeting respondent No. 1 said that he had come with the Government officials and there would be all round development of the area such as providing electricity, construction of roads and digging of tube wells and the people would be benefited, so they must vote for him and due to this promise the voters were considerably influenced. P.W. 24 the Executive Engineer, Irrigation, Kendrapara has proved the Log Book of Jeep No. ORU 7422 (Ext. 7). He stated that he had been to Talchuan on 10-12-79 as there was programme of the Minister of Irrigation who came for inspection. The entries dated 9th, 10th, 11th and 12th December, 1979 have been marked as Exts. 7/1, 7/2, 7/3 and 7/4 in the log book (Ext. 7). In the entry dated 9-12-79 it has been mentioned "Attended inspection of the Irrigation Minister". According to him, on 10-12-79 the Minister, Irrigation (R.W. 2) went to Talchuan by motor launch Tug-14. P.W. 27 has stated that a meeting was to be held at Talchuan on 10-12-79, but it could not be held as respondent No. 1 reached late and the meeting was held on 11-12-79 at 8.00 a.m. Respondent No. 1, R.W. 2 and R.W. 5 addressed the meeting. The S.D.O. Irrigation Department Sri Dayanidhi Acharya and his staff had arranged the meeting. So far as he remembered respondent No. 1 came by motor launch Tug-14 belonging to Rajnagar Block and the Jeep belonging to Irrigation Department was brought by crossing the river by ferry and was used by respondent No. 1 Mr. Mohapatra, learned counsel for the petitioner, pointed out that though respondent No. 1 has denied that a meeting was held on 11-12-79 at Talchuan it has been admitted that he reached Talchuan on 10-12-79 at mid-night and stayed there. R.W. 2 also stated in the same line. R.W. 2 also admitted that he was present at Talchuan in the night of 10-12-79. The entries in the log book Ext. 7 (Exts. 7/1 to 7/4) also go to show that R.W. 2 was present. The jeep ORU 7422 was used for election purpose which is evident from Ext. 7 series. Though respondent No. 1 states that he used a private motor launch 'Nandighosh' on hire basis for the purpose and used the same to reach Talchuan, this cannot be believed as admittedly Tug-14 was there at Talchuan in which R.W. 2 reached Talchuan. The log book of Tug-14 has been proved as Ext. 9 and the entries therein have been proved as Exts. 9/1 and 9/2. From the aforesaid exhibits and the evidence of the witnesses it should be believed that respondent No. 1 arrived Talchuan by Tug-14. The bill (Ext. I) dated 6-12-79 and receipt (Ext. J) dated 16-12-79 in support of hiring of motor launch 'Nandighosh' should not be believed as these have been procured for the

purpose of this case and the party accounts showing expenses have not been proved which would have been the best evidence in support of the case of the petitioner. So he argued that in the above circumstances it has been clearly established by oral and documentary evidence that respondent No. 1 had been to Talchuan by Govt. vessel Tug-14 and addressed a meeting at Talchuan on 11-12-79 where he made promises inducing the voters to vote for him. The presence of Government officers is also admitted. So the evidence adduced by the petitioner that the Government officers arranged the meeting and the motor vehicles were utilised for the purpose should be accepted. On the other hand Mr. Misra submitted that in the petition it has been mentioned that Government vehicle No. 3136 had been used, but P.W. 15 has stated that Government vehicle No. 3436 was utilised for the purpose. P.W. 27 has not mentioned the number of any Government vehicle. According to Mr. Misra, P.W. 24 has categorically stated that Irrigation Minister was on official duty and the vehicle No. 7422 was there and he had been with the vehicle No. 7422 for the purpose of inspection of the Irrigation Minister. There is no suggestion made to P.W. 24 that he or any other Government servants arranged the meeting. P.W. 27 stated that Sri Dayanidhi Acharya, the S.D.O. Irrigation Deptt. Rajnagar arranged the meeting at Talchuan for respondent No. 1. This Dayanidhi Acharya was summoned by the petitioner, but was not examined and was declined. This shows that the allegation that Government officers arranged the meeting is false. In the petition it has only been mentioned that respondent No. 1 promised that tube wells would be provided in the area, but P.W. 15 has stated that promise was made to provide electricity and to construct roads and P.W. 27 has stated that respondent No. 1 promised that there would be all round development in the area and small scale industries would be established. This shows that these witnesses are speaking falsehood. Mr. Misra further argued that P.W. 15 was a counting agent of the petitioner and he relied on Ext. D/11. But Ext. D/11 cannot be accepted as P.W. 15 has categorically denied that he was the counting agent and has stated that another person in the same is in his village. So Ext. D/11 will not be of much help to respondent No. 1. Mr. Misra pointed out that P.W. 27 is a candidate of Congress (I) from Aul constituency and he was a counting agent of the petitioner in the parliamentary election, 1980. It was further pointed out that these two witnesses have not lodged any written complaint before anybody and this conduct of these witnesses also goes to show that the allegations are not correct and the very fact that they have not lodged any complaint regarding such a matter goes to show that their statement made in court is an after thought. On the other hand, P.W. 27 has stated that he has not discussed with the petitioner till to-day (till the date of his examination) about use of Government vehicles, vessels and promises by respondent No. 1. He also pointed out that though in the evidence it has been brought out that two more Government motor launches namely 'Alaka' and 'Tug-4' were utilised, this did not find place in the petition. The log book of motor launch 'Alaka' has been marked as Ext. 10 but no entry has been proved. The log book of motor launch 'Tug-4' was brought to Court, but it has not been proved and was returned back. He further submitted that the evidence now led by the petitioner mentions some facts which have not been mentioned in the petition and in the absence of full particulars given in the petition as required under section 83(1)(b) of the Act, new allegations should not be entertained and the evidence with this regard should not be brought into the record. He cited a decision reported in A.I.R. 1969 S.C. 734 (Manubhai Nandlal Amersey v. Popatil Manilal Joshi and others) wherein it has been held:—

"Section 83(1)(b) is mandatory. Where a corrupt practice is charged against the returned candidate the election petition must set forth full particulars of the corrupt practice so as to give the charge a definite character and to enable the Court to understand what the charge is. The charge must be substantially proved as laid and evidence cannot be allowed to be given in respect of a charge not disclosed in the particulars. On a charge of telling the electors that by giving their vote to the particular candidate, they would commit the sin of ghatya evidence cannot be held to prove the charge of telling them that they would commit a sin of

Brahmha-hatya or the sin of disobeying the command of their religious leader."

He also cited a decision reported in A.I.R. 1979 S.C. 731 (Gurdev Singh v. Baldev Singh) wherein it has been held :—

'Where the petitioner did not make a written complaint to the Returning Officer about hiring of vehicles by the successful candidate for carrying voters nor did he mention this fact in the complaint made against the Presiding Officer of a polling station and in his cross-examination, he, though admitted that he did not make a complaint about hiring of vehicles, did not come forward with the explanation that he was not aware of the fact of hiring, the petitioner could not be deemed to have not made the complaint because he was not aware of the fact of hiring of vehicles. The petitioner in such circumstances could not be said to have proved the corrupt practice in the absence of complaint in regard to the alleged corrupt practice.'

Mr. Misra argued that in the absence of any written complaint such grave allegations should not be entertained. P.W. 27 is an active member of the Congress (I) party and was also a candidate for the assembly election. It is natural that he should make a written complaint about the allegations, but he has not done so. In the absence of any written complaint the oral evidence which is not reliable cannot be accepted. In view of the shaky nature of evidence and in the absence of particulars of allegations, it should be held that the allegations have not been proved. The allegations have also been denied by respondent No. 1 (R.W. 11), R.W.s. 2 and 4 who are responsible persons and R.W. 4 is a sitting M.L.A. of the area. After considering the argument of both sides and the evidence on record, I am of the view that though it has been established that Tug-14 had been to Talchuan, there is no reliable evidence that this Tug-14 was used by respondent No. 1 for the purpose of election. Similarly there is no reliable evidence that vehicle Nos. 3436, 3166 and 7422 were used by respondent No. 1 and there is also no reliable evidence that respondent No. 1 or his agent or any person with his consent obtained or procured the assistance of any Government servant for the furtherance of the prospects of the election.

No doubt, the evidence discloses that on the same night petitioner and R.W. 2 arrived at Talchuan. R.W. 2 came by a motor launch D-14. Several Government officers were also present there on that day with Government vehicles, as it is disclosed from the evidence of P.W. 24 that they were there to attend the inspection of the Irrigation Minister. These circumstances may give rise to grave suspicion that the vehicles and vessels were there for the purpose of electioneering of respondent No. 1 and the Government officers were also in attendance on the plea of inspection by the Irrigation Minister, R.W. 2. However, suspicion is not sufficient.

In the ultimatum I am of the view that the petitioner has failed to prove the allegation beyond reasonable doubt.

Paragraph 14 (iv).—The allegation is that on 11-12-79 at about 1.00 p.m. respondent No. 1 and his agent R.W. 2 visited Rajnagar Harijan Sahi and paid Rs. 10 to each Harijan including Dhruba Mallik (P.W. 12) and a total amount of about Rs. 2000 was distributed amongst the Harijans inducing them to vote for respondent No. 1. Thereafter they proceeded to attend the election meeting which was held at Rajnagar at about 2 p.m. Respondent No. 1 and R.W. 2 gave promises in the meeting to construct a bridge over river Hansuan, to supply electricity to each village of Rajnagar and to provide tube wells in each village if the people would vote for respondent No. 1.

In paragraph 11 of the written statement these allegations have been denied. It has been asserted that neither respondent No. 1 nor R.W. 2 visited the Harijan Sahi and paid money to Harijans. R.W. 2 did not visit Rajnagar on the date alleged and no promises were made either by respondent No. 1 or R.W. 2 as an inducement to vote for respondent No. 1.

On behalf of the petitioner P.W. 10 and P.W. 12, who allegedly received bribe from respondent No. 1, have been examined. P.W. 12 has stated that 20 to 22 days prior to the polling respondent No. 1 had been to Rajnagar and reached there at about 12.00 noon. He went to Harijan basti. Nalini Mohanty (R.W. 5) accompanied him to Harijan Basti. Both of them went round the basti. Respondent No. 1 paid them at the rate of Rs. 10, Rs. 15, and Rs. 20 to each family according to the number of voters of the family (at the rate of Rs. 5 for each vote). Though he was offered money he did not accept. Respondent No. 1 distributed about Rs. 2000 in the Harijan basti. Due to the payment the voters were very much influenced and expressed their desire to vote for respondent No. 1. The B.D.O. Rajnagar and other Government officers organised the meeting at Rajnagar. Respondent No. 1 told in the meeting that he had provided food and shelter to the cyclone affected people of the area. He also promised that a bridge over river Hansuan would be constructed if he wins the election. Due to the above promise people were visibly influenced. P.W. 10 has only spoken about the meeting held by respondent No. 1 at Rajnagar. He has deposed about several election meetings held by respondent No. 1 about which there are no allegations in the election petition. Mr. Mohapatra, learned counsel for the petitioner submitted that the meeting at Rajnagar has been admitted by respondent No. 1 and there is no reason why P.Ws. 10 and 12 should not be believed. Mr. Misra on the other hand submitted that P.W. 12 is the only witness to speak about payment of bribe. Though in the petition it has been mentioned that Rs. 10 was paid to each Harijan including P.W. 12, in the evidence P.W. 12 has stated that Rs. 5 was paid to each voter and he has denied to have received money though in the petition it has been mentioned that he was paid Rs. 10. He has not informed the petitioner about payment of bribe. The meeting at Rajnagar has been admitted by respondent No. 1, but the allegations of payment of bribe and giving promises have been denied by respondent No. 1. Petitioner, who has been examined as P.W. 28 has stated that he heard about payment of money from P.W. 12 and from Kalandi Routray, who has not been examined in this case. P.W. 10 does not support P.W. 12 regarding bribery. He has only stated about the meeting held at Rainagar, but he has not stated about any promise given in the meeting. P.W. 10 is also an active worker of Congress (I) party. So from this it is clear that P.W. 12 has not been corroborated by any other witness and his oral testimony cannot be accepted without contemporaneous assurance of reliable nature from an independent source. Considering the evidence of both sides, I am of the view that the petitioner signally failed to substantiate the allegations made against respondent No. 1.

Paragraph 14 (v).—It has been alleged that on 11-12-79 at about 3.00 p.m. respondent No. 1 in the company of his agent R.W. 2 visited village Kakharuni in Pattamundai Assembly constituency and paid Rs. 10 to each Harijan including Murali Mallik (P.W. 8) and Jemmejaya Mallik (not examined) and thus paid a total amount of Rs. 1000 inducing them to vote for him.

In paragraph 12 of the written statement it has been stated that the allegations are false. It has further been stated that neither respondent No. 1 nor R.W. 2 visited the place on the date alleged and payment of any gratification as an inducement to vote for respondent No. 1 has been denied. P.W. 8 has been examined by the petitioner to substantiate this charge. According to P.W. 8, respondent No. 1 and R.W. 2 had been to village Kakharuni about 20 to 22 days prior to the date of polling. He is a Ward Member. Ganeswar Jena (not examined) called him saying that he was wanted by respondent No. 1. So he came to the house of Ganeswar Jena where he found respondent No. 1 and R.W. 2. He, respondent No. 1, R.W. 2 and Ganeswar Jena visited Harijan basti where there are about 100 families. Respondent No. 1 sent for the Mukhiyas of each family and told them to vote in the symbol "Farmer and Bullock". Respondent No. 1 went to each of the houses and paid Rs. 10 to each of the Mukhiyas. Gopi Mallik and Bhagi Mallik (not examined) were some of the Mukhiyas whom money was paid. He was also paid Rs. 10. Respondent No. 1 told him to help him in the election. He was paid Rs. 10 each day through Ganeswar Jena till the date of polling for about 20 to 22 days. For that period he

orked for respondent No. 1. Due to the payment of money at the voters of their basti decided to vote for respondent No. 1, though earlier they had decided to vote for Congress (I) candidate. No doubt due proof of a single act of bribery by or with the knowledge and consent of the candidate or by his agents, however insignificant that act may be, is sufficient to invalidate the election. The judges are not at liberty to weigh its importance, nor can they allow any excuse, whatever the circumstances may be, such as they can allow in certain conditions in case of treating or undue influence by agents. For this reason, clear and unequivocal proof is required before a case of bribery will be held to have been established. Suspicion is not sufficient, and the confession of the person alleged to have been bribed is not conclusive. In this case there is no corroboration to the evidence of P.W. 8. This witness is in the nature of an accomplice as he has himself received the bribe. In the absence of any corroboration it is difficult to accept the evidence of this witness. So there is no merit in the allegations made against respondent No. 1.

Paragraph 14 (vi and vii).—These allegations are regarding payment of bribe at the rate of Rs. 10 to each Harijan in the Harijan bastis of Khadiania and Matia on 11-12-79 by respondent No. 1 inducing them to vote for him. To support this allegation petitioner has not examined any witness except his bare assertion. The petitioner's counsel has fairly conceded that there is no evidence to support the allegations contained in paragraph 14 (vi and vii) of the petition. The allegations in the circumstances have not been established.

Paragraph 14 (viii).—The allegation is that on 11-12-79 at about 5.00 p.m. an election meeting was held by respondent No. 1 at Pattamundai. The meeting was arranged by Government servants such as Gangadhar Jena, Asst. Engineer, Pattamundai Irrigation Subdivision and his subordinates as well as by Shri Pitambar Das, B.D.O.-in-charge of Pattamundai. The Government servants and their subordinates erected pandal and samiana for the meeting and also propagated through their subordinate such as Ganeshwar Jena, a Khalasi of Irrigation Department. In the meeting respondent No. 1 and R.W. 2 promised to provide tube wells in the villages and tiled roof houses to the poor villagers inducing them to vote for respondent No. 1.

In paragraph 15 of the written statement the above allegations have been denied. It is also stated that neither respondent No. 1 nor R.W. 2 visited the place on the date alleged. The allegation that the Government servants arranged the meeting etc. has been denied. P.W. 6 is the only witness examined in support of the case of the petitioner. He has stated that on 11-12-79 a meeting was held at about 6.00 p.m. at Pattamundai by respondent No. 1. A pandal was erected for the purpose. The S.D.O. Irrigation Gangadhar Jena, Section Officer Yudhistir Sahu and the B.D.O.-in-charge of Pattamundai Pitambar Das actively participated in the erection of the pandal. The Irrigation Department Khalasis Nabkishore Das and Nityananda Rath were erecting the pandal and were bringing necessary materials for the purpose. Two Government jeeps were utilised for the purpose. The entry in Ext. 7 (Log Book of ORU 7422) dated 12-12-79 (Ext. 7/4) shows that the jeep ORU 7422 was there at Pattamundai for the purpose of the visit of Minister of Irrigation, R.W. 2. On behalf of respondent No. 1 it is stated that there was no meeting on 11-12-79 at Pattamundai, but a meeting was held on 12-12-79 and R.W. 5 also denied the allegation that a meeting was held on 11-12-79 at Pattamundai. Mr. Misra, learned counsel for respondent No. 1, submitted that P.W. 28, the Petitioner himself, speaks about promises made for fixing irrigation points and supply of electricity by respondent No. 1, but this has not been stated by P.W. 6. No other witness has been examined to support P.W. 28. P.W. 6 is the President of the Block Congress (I) party and was the polling agent of the petitioner. When he was confronted with the list of polling agents (Ext. E/2) he did not remember whether he was the polling agent of the petitioner or not. From Ext. E/2 it appears that he was a polling agent of the petitioner. After considering the evidence, I am of the view that his evidence cannot be accepted without any corroboration and it cannot be said that his evidence is cogent and trustworthy. His evidence also differs from the allegations made in the petition. Ext. 7 also does not in any way help the petitioner. In the result, therefore, the allegations fail.

Paragraph 14(ix).—The allegation is that on 12-12-79 at about 3.00 p.m. the respondent No. 1 along with R.W. 2 and R.W. 5 visited village Jagajore. This village has been dominated by the refugees from Bangladesh. Respondent No. 1 and his companions addressed an election meeting and promised to provide electricity to the neighbouring villages if the people would vote for him. The people in the meeting demanded that electricity should be provided before election. Respondent No. 1 commanded R.W. 2 to implement the same and in fact just before the date of polling electric poles numbering about 150 were placed. This was done without prior sanction of the Government in order to enhance the prospect of the election of respondent No. 1.

In paragraph 16 of the written statement it has been stated that the allegations are false. It has also been stated that neither respondent No. 1, nor R.W. 2 or R.W. 5 visited the place on the date as alleged, and there is no village named Jagajore. The allegation that promises were made to supply electricity is false. It has been denied that any electric poles were placed according to the promises made. The petitioner has examined P.Ws. 9, 13 and 16 to prove the allegation. P.W. 9 has stated that on 12-12-79 at about 3.00 p.m. a meeting was held at Jagajore. Prior to the meeting an announcement was made by beat of drums by Dhaneswar Swain (Not examined) a Work Sarkar of the Irrigation Department. Daitari Sutar presided over the meeting and R.Ws. 2, 5 and 11 (respondent No. 1) were the speakers. Respondent No. 1 promised in the meeting that within three to four days electricity would be provided in the area and in fact after the meeting and before the polling date 100 electric poles were placed for providing electricity in the area. After the meeting people present were discussing amongst themselves that if electricity would be provided they would vote for respondent No. 1. Due to the above promise given by respondent No. 1 people changed their mind to vote for respondent No. 1. P.W. 13 is the Executive Engineer who joined as Executive Engineer, Electrical Construction Division, Marshaghal in July, 1980. He stated that there is no revenue village named Jagajore, the hat is called Jagajore. Jagajore hat has not been electrified. The electric poles that were placed have not reached upto Jagajore. Rankal was electrified in the year 1979-80. Estimate for supply of electricity was made in the year 1976-77 and the sanction was made in 1979-80. He produced Ext. 1 in support of his contention. The entry at sl. 125 in Ext. 1 is marked as Ext. 1/1. P.W. 16 also stated about the meeting held at Jagajore on 12-12-79 at about 3.00 p.m. and the promises made by respondent No. 1 for providing electricity in the area. He further stated that a memorandum was presented before respondent No. 1 on behalf of the refugees. Within 8 days thereafter electric poles numbering about 100 were placed from village Radia to Jagajore. Due to the above promises people were influenced and expressed that they would vote for respondent No. 1. Respondent No. 1 (R.W. 11) has categorically denied to have held any meeting at Jagajore. and stated that there is no revenue village named Jagajore. Mr. Misra, learned counsel submitted that there is no allegation in the petition that any assistance of any Government servant was obtained for holding the meeting, though P.W. 9 has stated so. P.W. 9 is a worker of Congress (I) party. Mr. Misra further submitted that P.W. 13, the petitioner's own witness, believes the allegations made by the petitioner. According to P.W. 13 the estimate was prepared in the year 1976-77 and sanction was made in the year 1979-80 for electrifying the area. So much prior to the election sanction had been made. P.W. 16 has only stated that respondent No. 1 said in the meeting that he would see that electricity and tube wells are provided in the area. There is no mention by P.W. 9 about the promises to provide tube well though it has been stated by P.W. 16. P.W. 16 has not stated about the bargaining for votes by respondent No. 1. Mr. Misra further argued that assuming though not admitting that respondent No. 1 promised to see that electricity would be provided in the area, he has not committed any offence because by then estimate and sanction had already been made. He relied on a decision reported in A.I.R. 1976 S.C. 27 (supra) and A.I.R. 1966 M.P. 255 (Hariram Singh v. Kamal Prasad Sharma). Considering the evidence of the witnesses I am of the view that the estimate and sanction had already been made for providing electricity in the area as would be evident from the statement of P.W. 13 and Ext. 1 and even assuming that respondent No. 1 stated in the meeting that he would see that electricity would be provided in the area soon, he has not committed any offence. Therefore, these allegations also fail.

Paragraph 14(x).—The allegation is that on 13-12-79 at about 3.00 p.m. an election meeting of respondent No. 1 was held at Bichana in Patkura Assembly Constituency. It was addressed by respondent No. 1 and his agents R.W. 2 and R.W. 4. R.W. 4 was taken as Cabinet Minister on the eve of election to further the prospect of the election of respondent No. 1. The election meeting was arranged by the Government servants such as the S.D.O. Irrigation Sri Baishnab Charan Mohapatra and his subordinates and the local B.D.O. by erecting pandal and propagating for respondent No. 1 by utilising Government jeeps. In this meeting respondent No. 1 and his agents (two Ministers, i.e. R.Ws. 2 and 4) promised to construct bridges on the rivers Chitrot-pala and Luna if the people would vote for respondent No. 1. They also promised to set up lift irrigation points and to provide electricity and as a matter of fact electric poles were suddenly placed in village Rankala during the election.

This allegation has been denied by respondent No. 1 in paragraph 17 of the written statement. It has been stated that R.W. 2 did not visit the place on the date alleged. It has also been denied that R.W. 2 or R.W. 4 were inducted to the Cabinet for furtherance of the election prospects of respondent No. 1. The allegations that Government servants organised the meeting and that respondent No. 1 made promises, are also denied. Placing of electric poles is also denied. It has been stated that Rankal and Bichana are at a long distance from each other.

In support of the case P.W. 14 has been examined. He has stated that on 13-12-79 respondent No. 1 held an election meeting at Bichana. The S.D.O. Irrigation, Patkura Sri Baishnab Charan Mohapatra and the then B.D.O. Garadpur had arranged the meeting. Respondent No. 1, R.W. 2 and R.W. 4 addressed the meeting. Respondent No. 1 told in the meeting that if people would vote for him he would see that bridges are constructed over rivers Luna and Chitrot-pala, lift irrigation facility is provided in the area and electricity is provided to the villages where there was no electricity. The people gathered there said to respondent No. 1 that if the above works would be done before polling, they would vote for him. He has stated that the villagers of Rankal demanded to provide electricity and respondent No. 1 promised to supply electricity within a fortnight and in fact 80 poles were placed, but electric wire has not been fitted. So the voters were considerably influenced. Petitioner examined himself as P.W. 28. He has stated that he heard this from others. Admittedly he has no personal knowledge about this. Mr. Misra, learned counsel for respondent No. 1 submitted that P.W. 14 is a counting agent of the petitioner as would be evident from Ext. D/4. He further submitted that there is no allegation about the meeting at Rankal in the petition. According to P.W. 13, the Executive Engineer, Electrical Construction Division, Marshaghai, Rankal had already been electrified. P.W. 13 further stated that estimate for providing electricity to Rankal had been prepared in the year 1977-78 and sanction had been made for the same in the year 1979-80. P.W. 14 also does not know when electricity was provided at Rankal. He also stated that respondent No. 1 held a meeting at Bichana, but it has been denied that he (P.W. 14) was present. R.W. 7, the sitting M.L.A., has stated that the meeting was arranged by the workers of the party and no promise was made in the meeting.

P.W. 14 is the solitary witness who has been examined to support the case of the petitioner. He was admittedly a counting agent of the petitioner. There is no corroboration to the evidence of P.W. 14. There is no allegation about Rankal. R.Ws. 2 and 4 were taken as Ministers in the Cabinet much prior to the election and much prior to the issue of notification for holding election to the Lok Sabha. So in the above circumstances it is difficult to rely on the evidence of P.W. 74 and this allegation also fails.

Paragraph 14 (duplicate).—Petitioner has come up with a case that on 22-12-79 Government jeep ORU 7306 belonging to B.D.O. Aul was used for election work of respondent No. 1 for carrying election posters. The B.D.O. Aul was himself carrying the same in the jeep though it was not in discharge of his official duty. It was detected by Dr. Kunja Behari Swain and others. Dr. Swain lodged a station diary No. 689 dated 22-12-79 in Pattamundai police station to that effect.

In paragraph 18 of the written statement the allegations have been denied. It has also been denied that the jeep No. ORU 7306 belonging to B.D.O. Aul was used for election work of respondent No. 1 and that the vehicle carried any posters. Dr. Kunja Behari Swain is a Congress (I) worker and had lodged a false station diary. The false diary made is a part of the plan to create evidence for the purpose of starting this election case.

P.Ws. 6, 19, 21, 25 and 29 have been examined in support of the petitioner's case and some documents have also been produced. P.W. 6 has stated that on 22-12-79 at about 9.00 P.M. he saw that posters of respondent No. 1 were being carried in the jeep belonging to B.D.O. Aul at Patrapur Ghat. When he reached there he found that the posters were being unloaded from a boat and loaded in the jeep. He asked the driver of the jeep and the B.D.O. Aul as to how they were carrying the posters of respondent No. 1 in the Government jeep. At that time Sri Biswanath Pandit who was working for respondent No. 2 also reached there. Thereafter they all came to Pattamundai police station and Dr. Kunja Behari Swain of Congress(I) party lodged a station diary entry. Dr. Kunja Behari Swain has now gone mad. The O.I.C. Pattamundai P. S. went to the Ghat and seized the block jeep and the posters. A seizure list was prepared. He has also signed in the seizure list. P. W. 19 has proved Ext. 4, the Log Book of vehicle No. ORU 7306. The entry dated 22-12-79 (Ext. 4/1) shows that the jeep had been to Patrapur Ghat to bring the Minister of Power & Irrigation Deptt. to Aul on receiving telephonic message from the Private Secretary. P.W. 21 the S.I. of Pattamundai has proved the station diary entry No. 689 dated 22-12-79 marked Ext. 5. He had no personal knowledge about the matter as he joined at the station much after the incident. P.W. 23 is the Driver of the jeep. He has stated on being asked by the B.D.O. Aul on 22-12-79 at about 8.00 p.m. to go to Patrapur Ghat with the jeep as the Minister would be coming to that place he went to Patrapur Ghat with the jeep ORU 7306. On reaching Patrapur Ghat he waited and slept there and he was alone. After some time he noticed that some one put something in the jeep which was packed in two gunny bags. When he wake up he found that several people had surrounded his jeep. The people gathered there challenged him as to why he was carrying the pamphlets in the jeep. He told them that he did not know anything about that. The people did not allow him to move and kept the jeep as well as him confined. After one to two hours the officer-in-charge of Pattamundai P.S. came there. He made some inquiries and noted down something. Thereafter he was asked to leave. Before leaving he unloaded the bundles. This witness was permitted to be cross-examined by the learned counsel for the petitioner. In cross-examination he stated that he had not gone to Patrapur Ghat with the empty jeep to bring pamphlets of respondent No. 1 and that the bundles were unloaded from the jeep at Patrapur Ghat. He denied that he knew that the bundles contained election posters and pamphlets of respondent No. 1 P.W. 29, the then S.I. of police Pattamundai has stated that on 22-12-79 he made a station diary entry (Ext. 5). Dr. Kunja Behari Swain filed a petition which is marked Ext. 8. After making station diary entry he has been to Patrapur Ghat for enquiry. There he found the jeep No. ORU 7306 and in that jeep posters of Lok Dal were loaded. When he asked the driver, he pleaded ignorance about the loading of the posters in the jeep. Mr. Mohapatra submitted that Ext. 4 the Log Book of ORU 7306 shows that there was no programme of the Minister to visit Patrapur Ghat but the jeep was there. From this it is clear that the jeep had gone to Patrapur Ghat for carrying the posters of respondent No. 1. In reply Mr. Misra submitted that P.W. 6 is admittedly the President of the Congress (I) party committee of Pattamundai and is a partisan witness and he was stated in cross-examination that the jeep was being loaded with the posters at Patrapur Ghat, but the B.D.O. was in Patrapur Bazar. The jeep along with the posters were brought to the police station. But in the petition it has been alleged that the B.D.O. Aul was carrying the posters of respondent No. 1 in the jeep. The S.I. of police (P.W. 29) on the other hand has stated in cross-examination that :—

"During inquiry it was revealed that the boatman Arjun Tarai had loaded the posters inside the jeep (ORU 7306) being directed by some one thinking that it was the jeep of Lok Dal. It could not be ascertained whether the loading of the posters in the jeep was intentional or by mistake. The station diary entry does not reveal as to whether the posters

were carried in the jeep or were unloaded from the jeep after I left."

He has stated that he did not see any worker of Lok Dal when he reached the other side of Patrapur Ghat where the jeep was there. Mr. Misra learned counsel for respondent No. 1 submitted that even assuming that the jeep had been to Patrapur Ghat and some posters were being loaded, it has not been proved that respondent No. 1 obtained or procured the assistance of any Government servant. He further submitted that any natural and ordinary interpretation of the words "obtaining or procuring or abetting or attempting" must carry with it the imperative requirement that the candidate concerned or his agent must have intentionally done an act which has the effect contemplated by section 123(7) of the Act. In other words 'mens rea' or a guilty mind as well as 'actus reus' or a wrongful act must concur to produce the result contemplated by law. He cited a decision reported in A.I.R. 1975 S.C. 2299 (supra) in support of his contention. He further argued that the corrupt practice, as laid down under section 123(7) of the Act, of obtaining or procuring or abetting or attempting to obtain or procure by a candidate or his agent or by any other person with the consent of a candidate or his election agent any assistance (other than the giving of vote) for the furtherance of the prospects of that candidate's election, from any person in the service of the Government and belonging to any of the classes mentioned therein should be proved beyond reasonable doubt. In this case there is no evidence nor any allegation in the petition that respondent No. 1 obtained or procured any assistance of any Government servant. According to Mr. Misra the driver of the jeep does not come under any of the classes of Government servants mentioned in section 123(7) of the Act. The evidence of P.W. 29 clearly establishes that no agent or any other person with the consent of the candidate or his agent was present near the Ghat. There is absolutely no evidence that any agent or any other person with the consent of election agent of respondent No. 1 loaded the posters in the jeep. There is also no evidence that the posters were carried in the jeep and even assuming that the posters were being loaded in the jeep, they might have been loaded by mistake by the boatman. There appears to be considerable force in the argument of Mr. Misra.

No doubt it has been established by documentary and oral evidence that posters were loaded in the Government jeep ORU 7306. But this is not sufficient to establish the allegation of corrupt practice as it has not been proved that respondent No. 1 or his agent or any other person with the consent of respondent No. 1 or his election agent obtained or procured or abetted or attempted to obtain or procure any assistance (other than the giving of vote) for the furtherance of the prospects of election of respondent No. 1 from any person in the service of Government as contemplated under section 123(7) of the Act. Admittedly there is no evidence that respondent No. 1, or his agent or any other person with their consent had anything to do with the loading of the posters in the jeep. There is no evidence whether the posters were actually carried by the jeep or not. So in the circumstances, I am of the view that the allegations have not been proved beyond reasonable doubt.

Paragraph 17 : It is alleged that respondent No. 1 engaged Government servants including one Govinda Chandra Barik of Disahi who was serving as peon in Disahi M. E. School as his polling agent in Booth No. 75 in Aul Assembly constituency. He was also doing election campaign for respondent No. 1. Similarly one Balaram Parida, a teacher of Mangalpur M.E. School was doing election campaign of respondent No. 1 and was engaged as his counting agent.

In paragraph 21 of the written statement it has been mentioned that respondent No. 1 does not remember if the persons named were his polling agents or counting agents. It has further been asserted that the schools mentioned in the petition are not Government Schools. P.W. 28, the petitioner himself, has stated about this. That these schools are Government schools has not been proved in this case. Mr. Misra pointed out that even if the schools are Government Schools a peon of a M.E. School does not come under the categories of officers mentioned in section 123(7) of the Act. However, it is also submitted that it has not been proved that the above named persons were polling agents or counting agents of respondent No. 1 by any documentary evidence. So after considering all these I am of the view that the allegation has not been established and the sole testimony of P.W. 28 without any corroboration cannot be relied on and

it has also not been established that the above named persons are in the service of Government and belong to any of the classes mentioned in section 123(7) of the Act.

Paragraph 18 : It has been alleged that on 31-3-79 respondent No. 1 in the company of the local M.A.A. Sri Bed Prakash Agarwalla (K.W. 4) who was elevated as Transport Minister on the eve of election for furtherance of the prospect of respondent No. 1's election, held a public meeting in Kendrapara town. The meeting was arranged by the Executive Officer, Kendrapara Municipality Sri Chandra Sekhar Parida and the S.D.O. Kendrapara Sri Pratulla Chandra Pattanayak and money was spent from Government fund as well as from Municipal fund for the purpose. In the meeting respondent No. 1 as well as K.W. 4 promised to provide electricity and more electric poles in different Municipal Wards if the people would vote for respondent No. 1 As a matter of fact, according to the election promise immediate steps were taken by Executive Officer, Kendrapara Municipality which is evident from letter No. 1790-K.M dated 31-12-79 (Ext. 2) sent to the S.O.O. Electrical Construction Division, Kendrapara with copy to K.W. 4 and just before the polling date, the Municipal authorities placed electric poles in different wards though there was no budget sanction of the Municipality.

In paragraph 22 of the written statement the allegations have been denied as false. It has also been stated that K.W. 11 and K.W. 4 did not visit Kendrapara on the date alleged. There was no election meeting held on that date as notification for election had not been issued by then. The allegations that Government servants arranged the meeting and that Government money as well as funds of Municipality were spent for the purpose have also been denied as false and motivated. Respondent No. 1 was not aware of any role played by the Executive Officer, Kendrapara Municipality on this score. The allegation that the Municipality took interest in placing is fantastic since it was the job of Electric Department but not of Municipality.

Petitioner filed a petition for amendment of the petition on 15th June, 1981 and by order No. 46 dated 18-5-81 this Court directed that this petition shall be dealt in the judgment. In the petition it has been mentioned that there is a typographical mistake inasmuch as the date 31-3-79 mentioned in paragraph 18 of the election petition should be 31-12-79 and it was prayed that this amendment should be allowed. A counter has been filed by respondent No. 1. It has been stated that this petition has been filed at a belated stage i.e. after close of the evidence and almost at the close of the argument and this petition should not be allowed at this stage. It is submitted by Mr. Misra that earlier an amendment petition dated 25-8-80 had been filed to amend paragraph 10 of the election petition which has been disposed of by order No. 14 dated 30-9-80, and the amendment petition has been dismissed as it was filed at a belated stage. At that time petitioner had also a chance to seek amendment of paragraph 18 which is now sought for. It is submitted that normally an application for amendment under section 86(5) of the Act should be made within a reasonable time before the commencement of the trial. The Court has power to allow an amendment even after the commencement of the trial but as a rule leave to amend at a late stage should be given in exceptional cases where the petitioner could not with reasonable diligence had discovered the new facts earlier. Leave to amend will not be given if the petitioner is not acting in good faith or has kept back the facts known to him before the trial started. Mr. Misra cited a decision reported in A.I.R. 1969 S.C. 734 (supra). As it appears the petitioner was not diligent and at this belated stage after the evidence is over and the argument is almost complete the petitioner has filed this petition, so this petition for amendment cannot be allowed. The petition for amendment is dismissed on merits. The petitioner has relied upon the evidence of P.W. 5, the Congress (I) M.L.A. and P.W. 11 to prove the allegation. P.W. 11 has introduced a new story that respondent No. 1 had gone to Municipal office which is not in the petition. P.W. 5 also does not support P.W. 11. Ext. 2 also does not connect respondent No. 1. Even P.W.s. 5 and 11 do not corroborate each other. P.W.s. 5 and 11 are partisan witnesses and there is no corroboration to their statement from an independent source. Also there was no meeting on 31-3-79 as alleged. So the allegations fail.

For the reasonings given above all these issues are answered against the petitioner.

8. Issue No. 7 : In paragraph 16 of the petition it has been alleged that respondent No. 1 committed corrupt practice under section 123(5) of the Act by incurring unauthorised expenditure in contravention of section 77 of the Act. Respondent No. 1 did not keep a separate and correct account of all expenditure in connection with the election incurred or authorised by him or by his election agent between the date of nomination and the date of declaration of the result. He did not mention the election expenditures, namely, offering of bribe to several persons, opening of election offices, engaging workers (each being paid Rs. 10 daily) and payment of house rent ranging from Rs. 50 to Rs. 100 for each office in his accounts.

In paragraph 20 of the written statement the above allegations have been denied and termed as false. It has also been asserted that respondent No. 1 has not incurred any unauthorised expenditure in contravention of section 77 of the Act and that correct account was maintained by him. All the expenditure incurred or authorised have been properly shown in the return of election expenses. It has also been denied that respondent No. 1 opened election office on payment of rent and that he engaged workers on payment of daily wages. It has been said that the allegations are vague and a lack in material particulars as required by law and hence should be struck off. As already held the charges of payment of bribe to the voters have been rejected as it has not been established by the petitioner. About payment of house rent the witnesses who have deposed are P.Ws. 5, 7, 9, 10, 11 and 22 and about payment to workers the above witnesses except P.W. 10 have deposed. Mr. Mohapatra submitted that the evidence of these witnesses should be accepted and it should be held that the petitioner has not mentioned the above expenses such as payment of house rent, payment to workers in the election accounts. So he is liable under section 123(6) for contravening section 77 of the Act. Mr. Misra for respondent No. 1 submitted that the allegations are vague and all the witnesses are party men and they have no personal knowledge about the payment. There is no corroboration to their evidence excepting taking a house at Kendrapara which has been stated by P.Ws. 5 and 11. P.Ws. 5 and 11 are also party men and are interested in the success of the election petition and there is no contemporaneous evidence of any reliable nature from an independent source. P.W. 5 says that respondent No. 1 had taken houses on rent from Raghunath Pani in Ward No. 14 for Rs. 60, from Hossain Saheb in Ward No. 13 for Rs. 90 and from Sadak Hossain in Ward No. 7 for Rs. 90, from Nagamani Mohanty of Patkura and Sareju Panda of Garadpur for Rs. 70 each. P.W. 11 states that in Ward No. 7 the house of Sadak Hossain was taken on rent for Rs. 90, in Ward No. 14 the house of Raghunath Pani was taken on rent for Rs. 60 and in Ward No. 12 the house of Hossain Saheb was taken on rent for Rs. 60. Respondent No. 1 himself has denied any payment towards house rent and workers. P.W. 9 Nagamani Mohanty whose house is said to have been taken on rent at Jagadalpur has denied that his house was taken on rent. Mr. Misra further argued that no documentary evidence, no receipts etc. have been produced and no particulars of payment have been mentioned in the election petition excepting making some vague allegations. He argued that even assuming though not admitting that some expenses have been made towards payment of house rent and payment to workers by respondent No. 1 there is nothing to show that these amounts even if taken into consideration will make respondent No. 1 liable under section 123(6) of the Act as it has not been established by the petitioner that if these expenses are added to the amount of expenses already shown this will exceed the amount of expenditure prescribed under the law. Mr. Misra relied on a decision reported in A.I.R. 1968 Orissa 99 (Ghasiram Majhi-v-Omkar Singh) wherein it has been held :—

"What S. 123(6) prohibits is the incurring or authorising of expenditure in contravention of S. 77 and not the method and manner of maintaining accounts. In other words what is by S. 123(6) is the contravention of sub-section 77(3) and not the contravention of sub-section (1) and (2) of Section 77. To interpret S. 123(6) in any other manner is to run counter to well established canons of interpretations."

When the petitioner failed to establish beyond reasonable doubt that the returned candidate had incurred and had failed to show in his accounts certain expenditure as alleged on the remuneration of the canvassors engaged by the latter with the result that

the expenditure shown by the latter did not exceed the limit of Rs. 7000 prescribed by R. 90(2).

Held that there was no non-compliance with the provisions of the Act and the Rules and therefore no corrupt practice as contemplated by S. 123(6) was committed by him."

He also cited A.I.R. 1971 S.C. 1295 (Magraj Patodia v. R. K. Birla and others) wherein it has been held :—

"To prove the corrupt practice of incurring expenditure beyond the prescribed limit it is not sufficient for the petitioner to prove merely that the expenditure more than the prescribed limit had been incurred in connection with the election; he must go further and prove that the excess expenditure was incurred with the consent or under the authority of the returned candidate or his election agent."

After considering the evidence on record and the argument of both sides I am of the view that the allegations made about unauthorised expenditure is vague and lack in details and the evidence produced has not been corroborated. It is also difficult to accept the evidence of P.Ws. 5 and 11 who are partisan witnesses. So in the absence of any contemporaneous assurance of reliable nature from an independent source it is difficult to rely on the oral testimony of the witnesses. There is also no evidence to show that the petitioner has exceeded the limit prescribed under the law. In the result, therefore, this allegation fails and his issue is answered against the petitioner.

9. Issue No. 8 : Nothing has been proved by the petitioner that there has been non-compliance with the provisions of the Act or Rules by respondent No. 1. It is also not seriously pressed by the petitioner. So this issue is answered against the petitioner.

10. Issue No. 9 : In paragraph 19 of the petition it has been alleged that in Mahanpur L. P. School booth in Mahanpara Assembly Constituency false voting took place and voters whose names were excluded from the voters' list were allowed to vote at the intervention of Sarat Kar, the election agent of respondent No. 1. Similarly there was false voting in several booths of Patkura Assembly Constituency including Patalipanka booth and Govindapur booth. Similar false voting was carried on by the agents of respondent No. 1 in Manpur booth in Aul Assembly Constituency. There was extensive rigging in the election and in the ballot boxes at the instance and connivance of respondent No. 1. In paragraph 20 it has been alleged that during counting many Government Servants who were supporters of respondent No. 1 were engaged as counting officers. In the counting of votes many votes which were to be counted in favour of the petitioner were not counted in his favour and many votes which were not to be counted in favour of respondent No. 1 were counted in his favour. Similarly many votes which were to be counted in favour of the petitioner were illegally rejected.

In paragraph 23 of the written statement the allegations made in paragraph 19 of the petition have been denied as false. It has been stated that no false voting took place and no voters whose names were excluded from the voters' list were allowed to vote at the instance of Saratkar. The allegations about false voting and rigging in election have been denied as false and vague. In paragraph 24 of the written statement the allegations made in paragraph 20 of the petition has been denied. It has been stated that no Government servants who were the supporters of respondent No. 1, as alleged, were appointed as counting agents. There was no lapses in counting. The Government servant do not belong to any political party and to brand any one of them as supporter of any political party or person is motivated and mischievous. The counting was proper and held according to the provisions of law in presence of the agents of all the candidates. P.W. 20 has been examined by the petitioner. P.W. 20 says that he was a polling agent of respondent No. 1 at Gobindpur polling booth in the last Parliamentary election held in 1980. Rajkishore Naik, the ex-M.L.A. of their area was working for respondent No. 1 in that election. Prafulla Kumar Behera was the polling agent of the petitioner. He remained in the booth from 7.00 a.m. to 8.00 p.m. whereafter he left. He again came back at about 3.00 or 3.30 p.m. P.W. 20 has further stated that Dharanidhar Sahu, Manoranjan Nath, Nityananda Behera, Gurucharan Nath and Jhari Nath though not present in the village on the date of

polling, there was false voting in their names by some of the workers of respondent No. 1, but he did not know the names of those who voted in the names of the above persons. P.W. 28, the petitioner himself, has also stated about false voting. But he has no personal knowledge about the same. Mr. Misra, learned counsel for respondent No. 1, argued that the evidence of P.W. 20 should not be believed as he is not a reliable man. No complaint has been filed before the Presiding Officer about the false voting by anybody. He cited a decision reported in A.I.R. 1979 S.C. 731 (Gurdev Singh-v-Baldev Singh) wherein it has been held—

"Whether the petitioner did not make a written complaint to the Returning officer about hiring of vehicles by the successful candidate for carrying voters nor did he mention this fact in the complaint made against the Presiding Officer of a polling station and in his cross-examination he, though admitted that he did not make a complaint about hiring of vehicles, did not come forward with the explanation that he was not aware of the fact of hiring, the petitioner could not be deemed to have not made the complaint because he was not aware of the fact of hiring of vehicles. The petitioner in such circumstances, could not be said to have proved the corrupt practice in the absence of complaint in regard to the alleged corrupt practice."

He also cited a decision reported in 10 E.L.R. 30 (Vashist Narain Sharma-v- Dev Chand & others) and submitted that there is nothing on record to show that the result of the election was materially affected. The petitioner has stated that about 1000 votes might have been counted in favour of respondent No. 1 though those ought to have been counted in favour of the petitioner. The counting agent of the petitioner, namely, P.W. 5 has only stated that during counting he had lodged a complaint regarding one vote which was counted in favour of respondent No. 1. He has given objection with respect to one ballot paper which was counted in favour of respondent No. 1 though it ought to have been counted in favour of the petitioner. P.W. 20 has stated about Gobindpur booth. But there is no corroboration to his statement. Mr. Misra further argued that though in the evidence some allegations have been made that some ballot boxes were received late and there was chance of tampering with the ballot boxes, there is no complaint about this and no allegation has been made in the petition. After considering the argument and the evidence, I see there is considerable force in the argument of Mr. Misra and I hold that this allegation has not been proved beyond reasonable doubt. This issue is answer against the petitioner.

11. The final picture that emerges is that the petitioner has failed to prove the allegations of corrupt practices against respondent No. 1. The election petition is, therefore, dismissed with costs. Hearing fee is assessed at Rs. 1000 (one thousand) to be paid to respondent No. 1 only.

Sd/-  
J. K. MOHANTY.  
72-6-81

Orissa High Court, Cuttack  
The 22nd June, 1981.

#### List of Witnesses Examined on behalf of the Petitioner :

- 1. P.W. 1 —Niranjan Mohanty.
- 2. P.W. 2 —Bhimsen Das.
- 3. P.W. 3 —Sadhu Ch. Mallik.
- 4. P.W. 4 —Nityananda Dhal.
- 5. P.W. 5 —Indramani Rout.
- 6. P.W. 6 —Arjuna Ch. Sahoo.
- 7. P.W. 7 —Kantha Mall.
- 8. P.W. 8 —Murali Mallik.
- 9. P.W. 9 —Sunakar Rout.
- 10. P.W. 10 —Haldhar Misra.
- 11. P.W. 11 —Md. Akbar Ali.
- 12. P.W. 12 —Dhiuba Mallik.
- 13. P.W. 13 —Ram Chandra Das.
- 14. P.W. 14 —Gopal Krishna Sarangi.
- 15. P.W. 15 —Muralishwar Behera.
- 16. P.W. 16 —Sudarsan Swain
- 17. P.W. 17 —Premamanda Ray.
- 18. P.W. 18 —Ganga Narayan Ota.

- 19. P.W. 19 —Biplin Behari Naik.
- 20. P.W. 20 —Narendra Behera.
- 21. P.W. 21 —Mdhab Mallik.
- 22. P.W. 22 —Laxmidhar Lenka.
- 23. P.W. 23 —Kasinath Jena.
- 24. P.W. 24 —Sachidananda Mohanty
- 25. P.W. 25 —Sk. Hidayatulla.
- 26. P.W. 26 —Aarendra Nath Patra.
- 27. P.W. 27 —Dola Govinda Naik.
- 28. P.W. 28 —Gayachand Bhuyan.
- 29. P.W. 29 —Janardan Mohanty.
- 30. P.W. 30 —Sidheswar Nayak.
- 31. P.W. 31 —Rahas Behari Nayak.

#### List of witnesses Examined on behalf of Respondent No. 1:-

- R.W. 1 —Nageswar Mohanty.
- R.W. 2 —Sarat Kumar Deb.
- R.W. 3 —Chandra Sekhar Bhatta.
- R.W. 4 —Bed Prakash Agarwalla.
- R.W. 5 —Nalini Mohanty.
- R.W. 6 —G. Shyam Sundar Chakravarty.
- R.W. 7 —Bijay Mohapatra.
- R.W. 8 —Nrusingha Ch. Samal.
- R.W. 9 —Nagmani Mohanty.
- R.W. 10 —Krutibas Patro.
- R.W. 11 —Bijayananda Patnaik.

#### List of documents marked on behalf of the Petitioner:

- Ext. 1. —Letter dt. 22-3-80 of the Chief Engineer (R.E. to all the Superintending Engineers (In-charge of R.E. works) along with a list of villages to be electrified during the year 1979-80.
- Ext. 1/1. —Entry in Sl. No; 125 of the list attached to Ext. 1.
- Ext. 2 —Letter No. 1796 dt. 31-12-79 of Executive Officer, Kendrapara Municipality to the S.D.O. Electrical Construction Division, Kendrapara.
- Ext. 2/1 —List appended with Ext. 2.
- Ext. 3. —The book in which the timings of arrival of ballot boxes from different booths of Patkura has been noted.
- Ext. 3/1. —Entry at Sl. No. 80 of the Book (Ext. 3) relating to Patkura M.E. School Booth.
- Ext. 4. —Log Book of UNICEF JEEP No. ORU 7306 for the period from 19-4-76 to 28-3-81.
- Ext. 4/1 —Entry dated 22-12-79 in Ext. 4.
- Ext. 5. —Station Diary entry No. 689 dt. 22-12-79 of Pattamundai P.S.
- Ext. 5/1. —Signature of J. Mohanty S.I. of Police, Pattamundai P.S. in Ext. 5.
- Ext. 6 —Log Book of jeep No. ORC 3136 belonging to S.D.O. Irrigation, Rajnagar for the period from 1-1-79 to 31-3-81.
- Ext. 6/1 —Signature of Dayanidhi Acharya, the then S.D.O. against entry dt. 9-12-79 in Ext. 6.
- Ext. 6/2. —Signature of Dayanidhi Acharya, the then S.D.O. against entry dt. 10-12-79 in Ext. 6.
- Ext. 6/3. —Signature of Dayanidhi Acharya, the then S.D.O. against entry dt. 11-12-79 in Ext. 6.
- Ext. 6/4. —Signature of Dayanidhi Acharya, the then S.D.O. against entry dt. 12-12-79.
- Ext. 7 —Log Book of Jeep No. ORU 7422 belonging to Executive Engineer, Irrigation, Kendrapara.

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|---|---|---|--|
| Ext. 7/1.   | —Entry dt. 9-12-79 in Ext. 7.   | Ext. H.   | —Tour programme of Surat Kumar Deb the then Minister of Irrigation From 18-12-79 to 22-12-79.                                      |
| Ext. 7/2.   | —Entry dt. 10-12-79 in Ext. 7.  | Ext. H/1.   | —Memo No. 103/MI dt. 18-12-79 cancelling the tour programme dt. 18-12-79 dt. 19-12-79 of Ext. H.                                   |
| Ext. 7/3.   | —Entry dt. 11-12-79 in Ext. 7.  | Ext. H/2.   | —Memo No. 103/MI dt. 18-12-79 cancelling the tour programme dt. 19-12-79 of Ext. H.  |
| Ext. 7/4.   | —Entry dt. 12-12-79 in Ext. 7.  | Ext. I  | —Bill dt. 6-12-79 for Rs. 1680/- towards hire charge of Motor Launch Nandighosh from 8-12-79 to 15-12-79 (eight days).             |
| Ext. 8.   | —Report dt. 22-12-79 by Dr. Kunja Behari Swain in the police station, Pattamundai.  | Ext. I/1.   | —Signature of Subash Mehatab in Ext. I.  |
| Ext. 8/1.   | —Signature of Dr. Kunja Behari Swain in Ext. 8.   | Ext. J.   | —Receipt granted by Subash Mehatab after receiving Rs. 1680/- towards hire charges.  |
| Ext. 9  | —Log Book of Tug—14.  | Ext. J/1  | —Signature of Subash Mehatab in Ext. J.  |
| Ext. 9/1.   | —Entry dt. 10-12-79 in Ext. 9.  | Ext. K.   | —Forwarding letter accompanying the statement of election expenses of Bijayananda Patnaik submitted to the Dist. Election Officer. |
| Ext. 9/2.   | —Entry dt. 11-12-79 in Ext. 9.  | Ext. K/1.   | —Signature of Bijayananda Patnaik in Ext. K.   |
| Ext. 9/3.   | —Signature of K.C. Acharya, Tahasildar, Rajnagar against the entry, Ext. 9/1.   | Ext. K/2.   | —Electoral expenditure statement submitted by Bijayananda Patnaik.   |
| Ext. 9/4.   | —Signature of K.C. Acharya, Tahasildar, Rajnagar against the entry, Ext. 9/2.   | Ext. K/3.   | —Signature of Bijayananda Patnaik in Ext. K/2.   |
| Ext. 9/5.   | —Entry by the B.D.D. Rajnagar with his signature dt. 13-12-79 in Ext. 9.  | Orissa High Court, Cuttack.<br>The 22nd June, 1981. |  |
| Ext. 10.  | —Log Book of M.L. Alaka.  | TRUE COPY :   | J.K. MOHANTY,  |
| Ext. 10/1.  | —Signature of Liaquat Ali, Driver of M.L. Alaka against entry dt. 9-12-79 in Ext. 10.   | Deputy Registrar,<br>Cuttack.                       | [No. 82/OR-HP/1/80]  |
| Ext. 10/2.  | —do— 10-12-79 in Ext. 10.   |   |  |
| Ext. 10/3.  | —do— dt. 11-12-79 in Ext. 10.   |   |  |
| Ext. 10/4.  | —do— dt. 12-12-79 in Ext. 10.   |   |  |
| Ext. 11.  | —Office copy order issued to the Sarang of M.L. Alaka on 9-12-79.   |   |  |
| Ext. 11/1.  | —Signature of Baurlbandhu Samal. Sarang of M.L. Alaka in Ext. 11.   |   |  |
| Ext. 11/2.  | —Signature of Rahas Behari Nayak, Tahasildar, Pattamundai in Ext. 11.   |   |  |
| List of Documents marked on behalf of Respondent No. 1: |   |   |  |
| Ext. A/X  | —Letter No. 768 dt. 25-4-78 of the Chairman Kendrapara to the Executive Engineer, Construction Division, Marshaghar, regarding installation of Electrical Poles within Municipal limit. |   |  |
| Ext. A/1.   | —List attached to Ext. A.   |   |  |
| Ext. B.   | —Letter No. 761 dt. 25-4-78 of the Chairman, Kendrapara Municipality to the Executive Engineer, State Electric Board, Kendrapara Division requesting to send the estimate for 25 poles. |   |  |
| Ext. C.   | —Letter No. 714 dt. 19-4-78 of the Chairman, Kendrapara Municipality to the Executive Engineer, Electrical Division, Kendrapara.  |   |  |
| Ext. D to D/12  | —Appointment of counting agents of Gayachand Bhuyan.  |   |  |
| Ext. E.   | —Appointment of Sadhu Charan Mallik as the Polling agent of Gayachand Bhuyan in Polling Station No. 53 (Kothasahi of Aul constituency).   |   |  |
| Ext. E/1.   | —Appointment of Bhimsen Das as the polling agent of Gayachand Bhuyan in polling station No. 65 (Junga P.S.M.E.) of Aul constituency.  |   |  |
| Ext. E/2.   | —Appointment of Arjun Charan Sahu as the Polling agent of Gayachand Bhuyan in polling station No. 117 (Satkudia) of Pattamundai constituency.   |   |  |
| Ext. E/3.   | —Appointment of Benu Charan das as the Polling Agent of Gyachand Bhuyan in polling station No. 32/118 (Haria Bank) of Rajnagar constituency.  |   |  |
| Ext. F.   | —Election Manifesto of Indian National Congress (I).  |   |  |
| Ext. G.   | —Tour particulars of Sri Bed Prakash Agarwalla, the then Minister of Commerce.  |   |  |
| Ext. G/1.   | —Signature of Bed Prakash Agarwalla in Ext. G.  |   |  |
|   |   |   | Sd/-<br>(V.D. Tulzapurkar)   |
|   |   |   | Sd/-<br>(A.P. Sen)   |
|   |   |   | [No. 82/BR-HP/1/80]<br>By order,<br>S. C. JAIN, Under Secy<br>Election Commission of India   |

New Delhi,  
February 1, 1982

Sd/-  
(V.D. Tulzapurkar)  
Sd/-  
(A.P. Sen)  
[No. 82] BR-HP [1|80]  
By order,  
S. C. JAIN, Under Secy.  
Election Commission of India.

## आवेदन

नई विज्ञप्ति 8 फरवरी, 1982

अध० अ० ४०.—निर्वाचन आयोग का समाधान हो गया है कि नीचे की सारणी के स्तम्भ (2) में यथा विनिहित लोक सभा/राज्य विधान सभा के निर्वाचन के लिए जा स्थम् (3) में विनिहित निर्वाचन-क्षेत्र में हुआ है, स्थम् (4) में उसके सामने विनिहित निर्वाचन लक्ष्ये वाला प्रथम् प्रधार्थी, लोक प्रतिनिधित्व इच्छिता, १९५१ क्षेत्र हाद्यनि बनाए गए नियमों द्वारा प्रवेक्षित समय के भीतर और रीति में उक्त सारणी के स्तम्भ (5) में यथा उपक्रमित रूप से अपने निर्वाचन व्ययों का लेखा दाखिल करने में असफल रहा है,

और उक्त अध्ययितों ने सम्यक सूचना दिए जाने पर भी उक्त असफलता के लिए या तो कोई कारण यथा स्पष्टीकरण नहीं दिया है या उनके द्वारा दिए गए अध्यावेदनों पर, यदि कोई हो, विचार करने के पश्चात् निर्वाचन आयोग का यह समाधान हो गया है कि उनके पास उक्त असफलता के लिए कोई पर्याप्त कारण या व्यायाविकार नहीं है;

अतः अब, निर्वाचन आयोग उक्त अधिनियम की द्वारा 10-के अनुसरण में नीचे की सारणी के स्तम्भ (4) में विनिहित अधिकारीों को सदस्य के किसी भी संघन के या किसी राज्य की विधान सभा अवधारणा विधान परिषद् के सदस्य चुने जाने भौत होने के लिए इस प्रावेश की तारीख से तीन वर्ष की कालावधि के लिए निरहित घोषित करता है।

## सारणी

क्रम सं०	निर्वाचन की विधिविधा	विधान सभा/लोक सभा निर्वाचन-क्षेत्र की वृ०स० भौत नाम	निर्वाचन लड्डे वाले अध्यर्थी का नाम व पता	निरहित का कारण
1	2	3	4	5
1.	लोक सभा के लिए साधारण निर्वाचन, 1980	3-चूरु	श्री किशोर कल्पना कान्त सम्पादक, “ओलमो” रत्नगढ़, जिला चूरु (राज०)	विधि द्वारा प्रवेक्षित रीति में निर्वाचन व्ययों का लेखा दाखिल करने में असफल।
2.	—वही—	3-चूरु	श्री चन्द्र प्रकाश अषा धनन, राजलवेशर, जिला चूरु (राज०)	विधि द्वारा प्रवेक्षित रीति में निर्वाचन व्ययों का लेखा दाखिल करने में असफल।
3.	—वही—	3-चूरु	श्री गीतुमल, गांधी चौक, सूजानगढ़ जिला चूरु (राज०)	विधि द्वारा प्रवेक्षित रीति में निर्वाचन व्ययों का लेखा दाखिल करने में असफल।
4.	—वही—	3-चूरु	श्री नौरंग शर्मा, पाम पोस्ट सिइमुज़, तहसील राजगढ़, जिला चूरु (राजस्थान)	विधि द्वारा प्रवेक्षित रीति में निर्वाचन व्ययों का लेखा दाखिल करने ने असफल।
5.	—वही—	3-चूरु	श्री कृष्णमूर्ण गोस्वामी मार्कंट श्री चन्द्र मेषराज द्वैया, लाड्डू, जिला नागौर (राजस्थान)	विधि द्वारा प्रवेक्षित रीति में निर्वाचन व्ययों का लेखा दाखिल करने में असफल।
6.	राजस्थान विधान सभा के लिए 75-वैर (राज०)	उप-निर्वाचन, 1980	श्री सम्मन लाल अजर, कस्ता बाड़ी, तहसील बाड़ी, जिला दरतपुर (राजस्थान)	विधि द्वारा प्रवेक्षित कोई भी निर्वाचन व्ययों का लेखा दाखिल करने में असफल।
7.	—वही—	75-वैर (राज०)	श्री भागीरथ, कस्ता बाड़ी, तहसील बाड़ी, जिला भरतपुर (राजस्थान)	विधि द्वारा प्रवेक्षित कोई भी निर्वाचन व्ययों का लेखा दाखिल करने में असफल।

1	2	3	4	5
8	गरजस्थान विधान सभा के लिए । ८—रत्नगढ़ साधारण निर्वाचन, 1980	१८—रत्नगढ़	श्री सोकेत अर्या, व्यापारियों का मोहल्ला, बिलाल बांस, रत्नगढ़, जिला चूल (गरजस्थान)	विधि द्वारा अपेक्षित कोई भी निर्वाचन व्ययों का लेखा दाखिल करने में अमरक्षन।
9	—वही—	७७—ग्रामेश्वर	श्री देवी मिह, मोहल्ला कायथपाड़ा, धौलपुर, जिला ; रत्नपुर (गरजस्थान)	विधि द्वारा अपेक्षित रीति में निर्वाचन व्ययों का लेखा दाखिल करने में अमरक्षन।
10.	—वही—	७८—शीलमुर	श्री रमन मिह, माम व पासू कोतुग्रा, तहसील धीलमुर, जिला ; रत्नपुर (गरजस्थान)	विधि द्वारा अपेक्षित रीति में निर्वाचन व्ययों का लेखा दाखिल करने में अमरक्षन।
11	—वही—	८५—गंगापुर	श्री गोविन्द गंगापुर मिटी, जिला मताईमाधापुर (गरजस्थान)	विधि द्वारा अपेक्षित कोई भी निर्वाचन व्ययों का लेखा दाखिल करने में अमरक्षन।
12	—वही—	१३२—शारीडोरा (ग्रजंजां)	श्री कैलाश चन्द्र, दामटिया राडोड़, पो० दामटिया राडोड़, तहसील गढ़ी, जिला ग्रामवाड़ा (गरजस्थान)	विधि द्वारा अपेक्षित कोई भी निर्वाचन व्ययों का लेखा दाखिल करने में अमरक्षन।

[सं० 76/गज/81 (41-45/3-4/171-175)]

## ORDERS

New Delhi, the 8th February, 1982

O.N. 40. —Whereas the Election Commission is satisfied that each of the contesting candidates specified in column (4) of the table below at the election to the House of the People/State Legislative Assembly as specified in column (2) and held from the constituency specified in column (3) against his name has failed to lodge an account of his election expenses within the time and in the manner, as shown in column (5) of the said Table as required by the Representation of the People Act, 1951 and the Rules made thereunder;

And, whereas, the said candidates have either not furnished any reason or explanation for the said failure even after due notice of the Election Commission, after considering the representations made by them, if any, is satisfied that they have no good reason or justification for the said failure;

Now, therefore, in pursuance of section 10A of the said Act, the Election Commission hereby declares the persons specified in column (4) of the Table below to be disqualified for being chosen as, and for being a member of either House of the Parliament or of the Legislative Assembly or Legislative Council of a State for a period of 3 years from the date of this order.

TABLE

S. No.	Particulars of election	S. No. & Name of the Assembly/ Parliamentary constituency	Name and Address of the con- testing candidate	Reason for disqualification
1	2	3	4	5
1.	General election to the House of the People, 1980.	३—Churu	Shri Kishore Kalpana Kant, Editor "Olmo", Ratangarh, District Churu (Rajasthan)	Failed to lodge the account of election expense in the manner required by law.
2.	-do-	३—Churu	Shri Chander Prakash Usha Bhawan, Rajaldeor, District Churu (Rajasthan)	Failed to lodge the account of election expenses in the manner required by law.

1	2	3	4	5
3.	General election to the House of the People, 1980	3—Churu	Shri Rijhumal, Gandhi Chowk, Sujangarh, District Churu (Rajasthan)	Failed to lodge the account of election expenses in the manner required by law.
4.	-do-	3—Churu	Shri Norang Sharma, Village & Post Sldhmukh, Tehsil—Rajgarh, District Churu (Rajasthan).	Failed to lodge the account of election expenses in the manner required by law.
5.	-do-	3—Churu	Shri Brij Bhushan Goswami, C/o Srichand Meghraj Baid, Ladnu, Distt. Nagaur (Rajasthan).	Failed to lodge the account of election expenses in the manner required by law.
6.	Bye-election to Rajasthan Legislative Assembly, 1980.	75—Weir (SC)	Shri Jhamman Lal Ajar, Kasba Bari, Tehsil Bari, Distt. Bharatpur (Rajasthan)	Failed to lodge any account of election expenses as required by law.
7.	-do-	75—Weir (SC)	Shri Bhagirath, Kasba Bari, Tehsil Bari, District Bharatpur (Rajasthan)	Failed to lodge any account of election expenses as required by law.
8.	General election to the Rajasthan Legislative Assembly, 1980.	18—Ratangarh	Shri Sokat Ali, Beoparion Ka Mohalla, Bichla Vas, Ratangarh, District Churu (Rajasthan)	Failed to lodge any account of election expenses as required by law.
9.	-do-	77—Rajakhera	Shri Vedi Singh, Mohalla Kyasthpada, Dholpur, District Bharatpur (Rajasthan)	Failed to lodge the account of election expenses in the manner required by law.
10.	-do-	78—Dholpur	Shri Ratan Singh Village & Post Koluwa, Tehsil—Dholpur, District Bharatpur (Rajasthan)	Failed to lodge the account of election expenses in the manner required by law.
11.	-do-	85—Gangapur	Shri Govind, Gangapur City, District Sawaimadhopur (Rajasthan)	Failed to lodge any account of election expenses as required by law.
12.	-do-	132—Bagodora (ST)	Shri Kailash Chander, Tamtiya Rathod, Post Tamtiya-Rathod, Tehsil Gari, District Banswara (Rajasthan)	Failed to lodge any account of election expenses as required by law.

[No. 76/RJ/81 (41-45/3-4/171-175)]

आंदो अंदो 41.—निर्वाचन आयोग का समाधान हो गया है कि नीचे की सारणी के स्तरम् (2) में यथा विनिर्दिष्ट लोक सभा राज्य विधान सभा के निर्वाचन के लिए जो स्तरम् (3) में विनिर्दिष्ट निर्वाचन-थेट से हुआ है, स्तरम् (4) में उसके सामने विनिर्दिष्ट निर्वाचन लड़ने वाला प्रत्येक भूम्यर्थी, लोक प्रतिनिधित्व अधिनियम, 1951 तथा तद्धीन बनाए गए नियमों द्वारा अनेक समय के भीतर और रीति में उक्त सारणी के स्तरम् (5) में यथा उपदेशित समय में अपने निर्वाचन व्ययों का लेखा आक्रित करने में असफल रहा है;

और उक्त अभ्यर्थियों ने सम्पूर्ण सूचना दिए जाने पर भी उक्त असफलता के लिए या तो कोई कारण अवश्य स्पष्टीकरण नहीं दिया है या उनके द्वारा दिए गए अभ्यावेदनों पर, यदि कोई हो, विचार करने के पश्चात् निर्वाचन आयोग का यह समाधान हो गया है कि उनके पास उक्त असफलता के लिए कोई पर्याप्त कारण या व्यायाविक्षय नहीं है;

अतः अब, निवाचन आयोग उक्त अधिनियम की धारा 10-के प्रनुभरण में नीचे की सारणी के स्तम्भ (4) में विनिर्विष्ट व्यक्तियों को संसद के कामाक्षिक के लिए निरहित घोषित करना है।

क्रमांक	निवाचन की विशिष्टियाँ सं०	विधान सभा/लोक सभा निवाचन-क्षेत्र की क्र० सं० और नाम	निवाचन नड़ने वाले अध्यर्थी का नाम व पता	निरहिता का कारण
1	2	3	4	5
1.	लोक सभा के लिए साधारण निवाचन 1980	45-करवा	श्री पुंडलिक हरी पटेल, मु० पोस्ट चाफन, तलुका पाठन, जिला सतारा (महाराष्ट्र)	विधि द्वारा अपेक्षित समय तथा रीति में निवाचन व्ययों का लेखा दाखिल करने में असफल।
2.	महाराष्ट्र विधान सभा के लिए साधारण निवाचन 1980	10-चेद	श्री प्रकाश हनुमस्तगाव मर्वे, जी-567, पाथरेवाडी, मङ्कुरली रोड कांडोवाली (पूर्व) बस्वर्ण-101 (महाराष्ट्र)	विधि द्वारा अपेक्षित कोई भी निवाचन व्ययों का लेखा दाखिल करने में असफल।
3.	—वही—	128-चम्पूर	श्री भैसे श्रीगाम नारायण, घाँड न० 16, चम्पूर रेलवे, जिला अमरावती (महाराष्ट्र)	विधि द्वारा अपेक्षित कोई भी निवाचन लेखा दाखिल करने में असफल।
4.	—वही—	173-बिलोनी	श्री काम्बले गगाराम लक्ष्मण, मु० पोस्ट शिगलर (गुमातधेस) जिला नाहड (महाराष्ट्र)	विधि द्वारा अपेक्षित कोई भी निवाचन व्ययों का लेखा दाखिल करने में असफल।
5.	—वही—	173-बिलोनी	श्री पालदेवर गगाधर शेंकेटरमन, डा० क्षमर्जी बद, मु० बिलोनी, जिला नाहड (महाराष्ट्र)	विधि द्वारा अपेक्षित रीति में निवाचन व्ययों का लेखा दाखिल करने में असफल।
6.	—वही—	191-वेंगापुर	श्री त्रिभुवन त्रिलोप कुमार छिमाझी, ९५, बैंडप, भयोरी रोड काज टेकडी, गणेशनगरी मरियमबाई चाल बन्धप (बस्वर्ण) (महाराष्ट्र)	विधि द्वारा अपेक्षित कोई भी निवाचन व्ययों का लेखा दाखिल करने में असफल।
7.	—वही—	194-प्रोरन्गाबाद पूर्व	श्री मधुकर शक्तर भोले म० डा० महालपिंपरी टो० डी० भौरंगाबाद जिला भौरंगाबाद (महाराष्ट्र) अब नामसित नगर प्रोसमानपुरा भौरंगाबाद (महाराष्ट्र)	विधि द्वारा अपेक्षित कोई भी निवाचन व्ययों का लेखा दाखिल करने में असफल।

1	2	3	4	5
8.	महाराष्ट्र विधान सभा के लिए सांसद निर्बाचन 1980	239—मगरमळकोला (म०ज०जा०)	श्री तालपे दत्त यामना म० गरदानी, जा० व तालुका प्रकोला, जिला अहमदनगर (महाराष्ट्र)	विधि द्वारा अपेक्षित रीति में निर्बाचित व्ययों का लेखा दाखिल करने में असफल।
9.	—वही—	266—करद उत्तर	श्री घबन तानुजीविशनु म०डा० कोपरडे हृष्णली तालुका करवा, जिला सतारा (महाराष्ट्र)	विधि द्वारा अपेक्षित कोई भी निर्बाचित व्ययों का लेखा दाखिल करने में असफल।
10.	—वही—	266—करद उत्तर	श्री काकासाहब रघुनाथ पाटिल, म०डा० करवा, तालुका करवा, जिला सतारा (महाराष्ट्र)	विधि द्वारा अपेक्षित कोई भी निर्बाचित व्ययों का लेखा दाखिल करने में असफल।
11.	—वही—	267—करद दक्षिण	श्री कामले तामाजीवाडू, म०डा० मंदवारा तालुका करवा, जिला सतारा (महाराष्ट्र)	विधि द्वारा अपेक्षित रीति में निर्बाचित व्ययों का लेखा दाखिल करने में असफल।
12.	—वही—	279—कडगांव (म०जा०)	श्री दिवेकर रावाजी प्रिम्बक, पिरडी, तालुका हुतकनासो, जिला कोल्हापुर (महाराष्ट्र)	विधि द्वारा अपेक्षित रीति में निर्बाचित व्ययों का लेखा दाखिल करने में असफल।

[म० 76/महा/81( 228-238)]

आदेश से,  
धर्म शीर, प्रवर मन्त्री  
भारत निर्बाचित आयोग

O.N. 41.—Whereas the Election Commission is satisfied that each of the contesting candidates specified in column (4) of the Table below at the election to the State Legislative Assembly as specified in column (2) and held from the constituency specified in column (3) against his name has failed to lodge an account of his election expenses within the time and in the manner, as shown in column (5) of the said Table as required by the Representation of the People Act, 1951 and the Rules made thereunder;

And, whereas, the said candidates have either not furnished any reason or explanation for the said failure even after due

notice or the Election Commission, after considering the representations made by them, if any, is satisfied that they have no good reason or justification for the said failure;

Now, therefore, in pursuance of section 10A of the said Act, the Election Commission hereby declares the persons specified in column (4) of the Table below to be disqualified for being chosen as, and for being a member of either House of the Parliament or of the Legislative Assembly or Legislative Council of a State for a period of 3 years from the date of this order.

TABLE

Sl. No.	Particulars of election	S. No. & Name of the Assembly/ Parliamentary Constituency	Name of the contesting candidate	Reason for disqualification and address
1	2	3	4	5
1.	General election to the House of People, 1980.	45—Karad	Shri Pundalik Hari Patel, At & Post Chafal, Tal. Patan, Distt. Satara (Maharashtra)	Failed to lodge the account of within time and in the man- ner required by law.
2.	General election to the Maha- rashtra Legislative Assembly, 1980	16—Khed	Shri Prakash Hanumantrao Surve, G-567, Patharewadi, Akurli Road, Kandivali (East) Bombay-101.	Failed to lodge any account of election expenses required by law.

1	2	3	4	5
3.	General election to the Maharashtra Legislative Assembly, 1980.	126—Chandur	Sh. Bhaise Shriram Narayan, Ward No. 16, Chandur Rly. Distt: Amaravati, (Maharashtra).	Failed to lodge any account of election expenses required by law.
4.	-do-	173—Biloli	Shri Kamble Gangaram Laxuman, At Post Degloor (Gumates) Distt : Nanded (Maharashtra)	Failed to lodge any account of election expenses required by law.
5.	-do-	173—Biloli	Sh. Paldewar Gangadhar Venkatraman Post Dharamabad, At Present Biloli, Distt. Nanded (Maharashtra)	Failed to lodge the account of election expenses in the manner required by law.
6.	-do-	191—Vaijapur	Sh. Tribhuwan Deelip Kumar Chimaji, 95, Bhandup, Quari Road, Kaju, Takadi, Ganegh, nagar, Mariambal Chal, Bhandup (Bombay) (Maharashtra)	Failed to lodge any account of election expenses required by law.
7.	-do-	194—Aurangabad East	Sh. Madhukar Shankar Bhole, At Post Mahalpimpri, T.D. Aurangabad Distt: Aurangabad (Maharashtra) and now at Nagsen Nagar, Osmanpura, Aurangabad (Maharashtra)	Failed to lodge any account of election expenses required by law.
8.	-do-	239—Nagar Akola (ST)	Sh. Talape Dattu Yamana, At Gardani P.O., Tal. Akola, Distt. Ahmednagar, (Maharashtra)	Failed to lodge the account in the manner required by law.
9.	-do-	266—Karad North	Sh. Chavan Tanuji Vishnu, At & Post Koparde Haveli, Tal. Karad, Distt. Satara (Maharashtra)	Failed to lodge any account of election expenses required by law.
10.	-do-	266—Karad North	Shri Kakasaheb Raghunath Patil, At & Post Karve, Tal. Karad, Distt: Satara (Maharashtra)	Failed to lodge any account of election expenses required by law.
11.	-do-	267—Karad South	Sh. Kambale Tamaji Dadu, At & Post Nandgaon, Tal. Karad, Distt : Satara (Maharashtra).	Failed to lodge the account in the manner required by law.
12.	-do-	279—Vadgaon (SC)	Sh. Divekar Ravaji Trimbak, Shirdi Taluka Hatkangale, Distt. Kolhapur (Maharashtra)	Failed to lodge the account in the manner required by law.

## आवेदन

नई विल्ली, 8 फरवरी, 1982

आ० अ० 42.—निर्बाचिन आयोग का समाधान हो गया है कि नीचे की सारणी के स्तम्भ (2) में यथा विनिर्विष्ट लोक सभा/राज्य विधान सभा के निर्बाचिन के लिए जो स्तम्भ (3) में विनिर्विष्ट निर्बाचिन-सेवा से हुआ है, स्तम्भ (4) में उनके सामने विनिर्विष्ट निर्बाचिन लड़ने वाला प्रध्यायी, लोक प्रतिनिधित्व प्रधिनियम, 1951 तथा तदीन बनाए गए नियमों द्वारा अपेक्षित समय के बीतर और रीति में उक्त सारणी के स्तम्भ (5) में यथा उपर्याप्त है वे अपने निर्बाचिन व्ययों का लेखा दाखिल करने में असफल रहा है;

और उक्त अध्यायी ने सम्यक सुन्हना दिए जाने पर भी उक्त असफलता के लिए या तो कोई कारण अथवा स्पष्टीकरण नहीं दिया है या उनके द्वारा विए गए अध्यायेवनों पर, यदि कोई हो, विचार करने के पश्चात् निर्बाचिन आयोग का यह समाधान हो गया है कि उनके पास उक्त असफलता के लिए कोई परालित कारण या न्यायीचित्र नहीं है;

अतः अब, निर्बाचिन आयोग उक्त अधिनियम की धारा 10-के अनुसरण में नीचे की सारणी के स्तम्भ (4) में विनिर्विष्ट व्यक्तियों को संसद के किसी भी सदन के या किसी राज्य की विधान सभा अथवा विधान परिषद के सदस्य बने जाने और होने के लिए इस आवेदन की तारीख से तीन वर्ष की कालावधि के लिए निरहृत घोषित करता ।

## सारणी

क्रम सं०	निर्बाचिन की विधिष्ठयां विधान सभा/लोक सभा	निर्बाचिन लड़ने वाले अध्ययों का नाम व पता	निरहृत का कारण
	निर्बाचिन-सेवा की ऋ० सं०	और नाम	
1	2	3	4
1.	मध्य प्रदेश विधान सभा के लिए साधारण निर्बाचिन, 1980.	26-शिवपुरी	श्री इकराम उद्दीन, पो० पीछौर जिला शिवपुरी, (म० प्र०)
2.	-वही-	2. भाडेर (भ० जा०)	श्री गजू ग्राम व पोस्ट बिटारी, तहसील भाडेर, ग्वालियर (म० प्र०)
3.	-वही-	5०-मेहर	श्री नारायण सिंह, 42/1 पुरानी सिविल लाईन के सामने, मेहर हाऊस जबलपुर (म० प्र०)
4.	-वही-	8४-बैकुण्ठपुर	श्री बुर्जा प्रसाद पो० व मुकाम मनेन्द्रगढ़, जिला सरगुजा (म० प्र०)
5.	-वही-	8४-बैकुण्ठपुर	श्री शिवाजी बोमनहिल कालरी, पो० सोनामनी कालरी, तहसील मनेन्द्रगढ़ जिला सरगुजा (म० प्र०)
6.	-वही-	28-कोलारस (भ० जा०)	श्री नक्ट उर्फ नारायणी, वार्ड क्रमांक 5, कोलारस (म० प्र०)
7.	-वही-	10९-तानाखार (भ० ज० जा०)	श्री मनराजन सिंह, ग्राम कटारीमगीर, पो० आ० जट्टा, तहसील कट्टोरा, जिला बिलासपुर (म० प्र०)
8.	-वही-	12५-चंद्रपुर	श्री भोहिल राम, मूकाम-पोस्ट कोटमी बाथा चंद्रपुर तहसील सकती, जिला बिलासपुर (म० प्र०)
9.	-वही-	10४-कटघोरा	श्री विलदार सिंह, मौजा बतारी, पो० आ० दीपका, तहसील कटघोरा, जिला बिलासपुर (म० प्र०)
10.	-वही-	1३-ग्वालियर	श्री धूष सिंह, ग्राम डाठीपुर, गांधीरोड गांधीरोड ग्वालियर-२ (म० प्र०)

1	2	3	4	5
11.	मध्यप्रदेश विधान सभा के लिए साधारण निवाचित 1980.	18-मुरार	श्री अलबेल सिंह, नई बस्ती तिकोनिया मकान नं० 62 मुरार (म० प्र०)	विधि द्वारा अपेक्षित कोई भी निवाचित व्ययों का लेखा दाखिल करने में असफल
12.	-वही-	90-मूरजपुर (ग्र० जा०)	श्री सत्यनारायण, ग्राम गोपालपुर, पो० मूरजपुर, तहसील सूरजपुर, जिला सरायुजा (म० प्र०)	विधि द्वारा अपेक्षित रीति में निवाचित व्ययों का लेखा दाखिल करने में असफल
13.	-वही-	57-ग्रमानंग (ग्र० जा०)	श्री शुद्धवा, ग्राम मिहांवा पो० सिमरो तहसील पवई, जिला पश्चा (म० प्र०)	विधि द्वारा अपेक्षित रीति में निवाचित व्ययों का लेखा दाखिल करने में असफल
14.	-वही-	10-मेहगांव	श्री रामगिलाले, ४४ थापक, गोरसी, भिड (म० प्र०)	विधि द्वारा अपेक्षित रीति में निवाचित व्ययों का लेखा दाखिल करने में असफल
15.	-वही-	136-भटगांव (ग्र० जा०)	श्री नी० एल० सागर ग्राम पवनी, पो० आ० पवनी, बाया पबलाईगढ़ तहसील बालोदबाजार जिला रायपुर (म० प्र०)	विधि द्वारा अपेक्षित कोई भी निवाचित व्ययों का लेखा दाखिल करने में असफल
16.	-वही-	138-भटगांव (ग्र० जा०)	श्री बिहारी लाल गिरे ग्राम सारई सराईपाली पो० आ० पथरला बाया जगदीशपुर जिला रायपुर (म० प्र०)	विधि द्वारा अपेक्षित रीति में निवाचित व्ययों का लेखा दाखिल करने में असफल
17.	-वही-	138-भटगांव (ग्र० जा०)	श्री धरमा मु० सोहागपुर पो० धोबनी हाया सरसीवां जिला रायपुर (म० प्र०)	विधि द्वारा अपेक्षित रीति में निवाचित व्ययों का लेखा दाखिल करने में असफल
18.	-वही-	138-भटगांव (ग्र० जा०)	श्री राम दुलारे ग्राम सेदुरस, पो० आ० सरसीवा, तहसील बालोदबाजार, जिला रायपुर (म० प्र०)	विधि द्वारा अपेक्षित रीति में निवाचित व्ययों का लेखा दाखिल करने में असफल
19.	-वही-	124-मालबन्धरोदा (ग्र० जा०)	श्री अनुपदास पात्रे, तिलक वार्ड मृगेली, जिला विलासपुर (म० प्र०)	विधि द्वारा अपेक्षित रीति में निवाचित व्ययों का लेखा दाखिल करने में असफल
20.	-वही-	108-कटघोरा	श्री बलराम सिंह ग्राम कांजीपानी पो० आ० चैतमा, तहसील कटघोरा जिला विलासपुर (म० प्र०)	विधि द्वारा अपेक्षित कोई भी निवाचित व्ययों का लेखा दाखिल करने में असफल
21.	मध्य प्रदेश लोक सभा के लिए साधारण निवाचित 1980.	13-रायगढ़ (ग्र० जा०)	श्री स्वामीवेच्छाय छड़ा ग्राम लोदाघम्बा, पोस्ट हरीडाउ तहसील जसपुर जिला रायगढ़ (म० प्र०)	विधि द्वारा अपेक्षित रीति में निवाचित व्ययों का लेखा दाखिल करने में असफल।

## ORDER

**O.N. 42.**—Whereas the Election Commission is satisfied that each of the contesting candidates specified in column (4) of the Table below at the election to the House of the People/State Legislative Assembly as specified in column (2) and held from the constituency specified in column (3) against his name has failed to lodge an account of his election expenses within the time and in the manner, as shown in column (5) of the said Table as required by the Representation of the People Act, 1951 and the Rules made thereunder;

And, whereas, the said candidates have either not furnished any reason or explanation for the said failure even after due notice or the Election Commission, after considering the representations made by them, if any, is satisfied that they have no good reason or justification for the said failure;

Now, therefore, in pursuance of section 10A of the said Act, the Election Commission hereby declares the persons specified in column (4) of the Table below to be disqualified for being chosen as, and for being a member of either House of the Parliament or of the Legislative Assembly or Legislative Council of a State for a period of 3 years from the date of this order.

TABLE

S. No.	Particulars of election	S.No. & Name of of the Assembly Parliamentary Constituency	Name of contesting candidate	Reason for disqualification
1	2	3	4	5
1.	General election to the Madhya Pradesh Legislative Assembly, 1980.	26-Shivpuri	Shri Ikramuddin, Post Pichhor, Distt. Shivpuri (Madhya Pradesh)	Failed to lodge any account of election expenses as required by law.
2.	—do—	21-Bhander (SC)	Shri Gaiju, Vill. & P.O.—Bhitari, Tehsil Bhander, Distt. Gwalior (M.P.)	Failed to lodge any account of election expenses as required by law.
3.	—do—	59-Maihar	Shri Narayan Singh, 421/1, Opposite Old Civil Lines, Maihar house, Jabalpur, (M.P.).	Failed to lodge any account of election expenses as required by law.
4.	—do—	88-Balkunthpur	Shri Durga Prasad, Post and Mukami Manendragarh, Distt. Surguja (M.P.).	Failed to lodge any account of election expenses as required by law.
5.	—do—	88-Balkunthpur	Shri Shivaji Domnahil Kalri, Post Sonamani Kalri, Tah. Manendragarh, Distt. Surguja (M.P.).	Failed to lodge any account of election expenses as required by law.
6.	—do—	28-Kolaras (SC)	Shri Naktu alias Narayan, Ward No. 5, Kolaras, District Shivpuri (M.P.).	Failed to lodge the account of election expenses in the manner required by law.
7.	—do—	109-Tanakhar (ST)	Shri Manrakhen Singh, Village Kataringaoi, Post Jatga, Tehsil Katghora, District Bilaspur (M.P.).	Failed to lodge the account of election expenses in the manner required by law.
8.	—do—	125-Chandrapur	Shri Mohit Ram, Village & Post Kotmi, Via Chandrapur, Tehsil Sakti, District Bilaspur (M.P.).	Failed to lodge the account of election expenses in the manner required by law.
9.	—do—	108-Katghora	Shri Dildar Singh, Village Atari, Post Dipka, Tehsil Katghora, Distt. Bilaspur (M.P.).	Failed to lodge the account of election expenses in the manner required by law.

1	2	3	4	5
10.	General election to the Madhya Pradesh Legislative Assembly, 1980.	15-Gwalior	Shri Dhundh Singh Village Thatipur, Gandhi Road, Distt. Gwalior (M.P.).	Failed to lodge any account of election expenses in the manner required by law.
11.	—do—	18-Morar	Shri Albel Singh Nai Basti Tikoma, House No. 62, Morar, Distt. Gwalior (M.P.)	Failed to lodge any account of election expenses in the manner required by law.
12.	—do—	90-Surajpur	Shri Satya Narayan, Village Gopalpur, Post Surajpur, Tahsil Surajpur, Distt. Surguja (M.P.).	Failed to lodge any account of election expenses in the manner required by law.
13.	—do—	57-Amanganj (SC)	Shri Dhandhua, Village Mihgaon, Post. Simri, Tahsil Pawai, Distt. Panne (M.P.)	Failed to lodge account of election expenses in the manner required by law.
14.	—do—	10-Mehgaon	Shri Ram Gilole, 88, Thapak Gormi, Distt. Bhind (M.P.).	Failed to lodge account of election expenses in the manner required by law.
15.	—do—	136-Bhatgaon (SC)	Shri C.L. Sagar, Vill. & Post Paoni, Via Bilaigarh, Tahsil Balodabazar, Distt. Raipur (M.P.).	Failed to lodge any account of election expenses required by law.
16.	—do—	136-Bhatgaon (SC)	Shri Baharilal Giri Village Sai Saraiyal, P.O. Patharla, Via Jagdishpur, Distt. Raipur (M.P.).	Failed to lodge the account of election expenses in the manner required by law.
17.	—do—	136-Bhatgaon (SC)	Shri Dharma, Village Sohagpur, P.O. Dhabani, Via Sarsiwa, Distt. Raipur (M.P.).	Failed to lodge the account of election expenses in the manner required by law.
18.	—do—	136-Bhatgaon (SC)	Shri Ramdularc, Villagge Senduras, P.O. Saraiswa, Tahsil Balodabazar, Distt. Raipur (M.P.).	Failed to lodge the account of election expenses in the manner required by law.
19.	do	124-Malkiroda (SC)	Shri Atup Das Patre, Tilak Ward Mungeli, Distt. Bilaspur (M.P.).	Failed to lodge the account of election expenses in the manner required by law.
20.	—do—	108-Katghora	Shri Balram Singh, Village Kanjipani, P.O. Chaitma, Tahsil Katghora, Distt. Bilaspur (M.P.).	Failed to lodge any account of election expenses required by law.
21.	General election to the House of People 1980-Madhya Pradesh.	13-Raigarh (ST)	Shri Shyamdeo Sai, Kshatra Village Lodhaomba, Post Harradonad, Tahsil Jashpur, Distt. Raigarh (M.P.).	Failed to lodge the account of election expenses in the manner regarding by law.

[No. 76/MP/81(291—310)]

By Order,

DHARAM VIR, Under Secy,  
Election Commission of India.

## आदेश

नई दिल्ली, 8 फरवरी, 1982

आ० अ० 43.—यतः निर्वाचन आयोग का समाधान हो गया है कि जनवरी 1980 में हुए लोक सभा के लए साधारण निर्वाचन के लिए 2-दक्षिण दिल्ली निर्वाचन क्षेत्र से चुनाव लड़ने वाले उम्मीदवार श्री रामसुन्दर तिवारी "मन्तु तुलसी" सी-3 आफीसस फोल्ड हास्टल, कैनाल कालोनी, ओषधना, मई दिल्ली लोक प्रतिनिधित्व अधिनियम, 1951 तथा तदीन बनाए गए नियमों द्वारा अपेक्षित अपने निर्वाचन घटनों का कोई भी लेखा दाखिल करने में असफल रहे हैं;

और यह, उक्त उम्मीदवार ने, भव्यक सूचना दिए जाने पर भी, इस असफलता के लिए कोई कारण अवश्या स्पष्टीकरण नहीं दिया है और निर्वाचन आयोग का यह समाधान हो गया है कि उसके पास इस असफलता के लिए कोई पर्याप्त कारण या अधिकारित्य नहीं है;

प्रतः अब, उक्त अधिनियम की धारा 10-क के अनुसरण में निर्वाचन आयोग एवं उक्त श्री रामसुन्दर तिवारी "मन्तु तुलसी" की संसद के किसी भी सदन के या किसी राज्य की विधान सभा अथवा विधान परिषद् के सदस्य चुने जाने और होने के लिए इस आदेश की तारीख में तीन वर्ष की कालावधि के लिए निरहित घोषित करता है।

[मं० दिल्ली-बौ० म०/२/८० (३५)]

आदेश में,

श्री० ना० नागर, अव० सचिव

भारत निर्वाचन आयोग

## ORDER

New Delhi, the 8th February, 1982

O.N. 43.—Whereas the Election Commission is satisfied that Shri Ram Sunder Tiwari "Sant Tulsi", C-3, Officers' Field Hostel, Canal Colony, Okhla, New Delhi a contesting candidate for general election to the House of the People held in January, 1980 from 2-South Delhi constituency has failed to lodge any account of his election expenses as required by the Representation of the People Act, 1951, and the Rules made thereunder;

And whereas the said candidate, even after due notice, has not given any reason or explanation for the failure and the Election Commission is satisfied that he has no good reason or justification for the failure;

Now, therefore, in pursuance of section 10A of the said Act, the Election Commission hereby declares the said Shri Ram Sunder Tiwari "Sant Tulsi" to be disqualified for being chosen as, and for being, a member of either House of Parliament or of the Legislative Assembly or Legislative Council of a State for a period of three years from the date of this order.

[No. DL-HP/2/80(35)]

By order,

O. N. NAGAR, Under Secy.  
Election Commission of India.